Bruce R. Thompson

Interviewee: Bruce R. Thompson
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Description

The Honorable Bruce R. Thompson, born July 31, 1911, is a native Nevadan. In his oral history, he describes growing up in Reno on one acre on the Truckee River with cows, chickens, and a vegetable garden. Thompson graduated with a B.A. in philosophy and English from the University of Nevada, Reno (UNR) where he served on the school newspaper and the debate team.

Thompson graduated from Stanford Law School and was admitted to the Nevada Bar in 1936. He practiced law until his appointment as an assistant U.S. attorney. Judge Thompson has a keen memory for stories of law practice and being a prosecutor. Appointed to the Nevada federal district court in 1963 by President John F. Kennedy, Judge Thompson served until his death in 1992. His memories, stories, and opinions cover his judicial philosophy, the courts, procedure, administration, judges, lawyers, and law clerks. Judge Thompson traveled widely throughout the Ninth Circuit, sitting at the district court and on appellate panels; he was also active in the Federal District Judges Association. Judge Thompson was a lifelong outdoorsman and horseman, and his life was a balance of work and family. Memories include family trips, hunting, and fly-fishing.

The oral history interviews with the Honorable Bruce R. Thompson are presented here as part of the Nevada Legal Oral History Project, a joint effort of the Nevada Judicial Historical Society, the Ninth Judicial Circuit Historical Society, and the University of Nevada Oral History Program.

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An Oral History Conducted by Jay Sourwine
Edited by Patricia A. Cooper-Smith

University of Nevada Oral History Program

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Preface

Established in 1964, the University of Nevada Oral History Program (UNOHP) explores the remembered past through rigorous oral history interviewing, creating a record for present and future researchers. The program's collection of primary source oral histories is an important body of information about significant events, people, places, and activities in twentieth and twenty-first century Nevada and the West.

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While taking great pains not to alter meaning in any way, the editor may have removed false starts, redundancies, and the "uhs," "ahs," and other noises with which speech is often liberally sprinkled; compressed some passages which, in unaltered form, misrepresent the chronicler's meaning; and relocated some material to place information in its intended context. Laughter is represented with [laughter] at the end of a sentence in which it occurs, and ellipses are used to indicate that a statement has been interrupted or is incomplete…or that there is a pause for dramatic effect.

As with all of our oral histories, while we can vouch for the authenticity of the interviews in the UNOHP collection, we advise readers to keep in mind that these are remembered pasts, and we do not claim that the recollections are entirely free of error. We can state, however, that the transcripts accurately reflect the oral history recordings on which they were based. Accordingly, each transcript should be approached with the

same prudence that the intelligent reader exercises when consulting government records, newspaper accounts, diaries, and other sources of historical information. All statements made here constitute the remembrance or opinions of the individuals who were interviewed, and not the opinions of the UNOHP.

For more information on the UNOHP or any of its publications, please contact the University of Nevada Oral History Program at Mail Stop 0324, University of Nevada, Reno, NV, 89557-0324 or by calling 775/784-6932.

Introduction

Born July 31, 1911, Bruce R. Thompson was a native Nevada son. His father taught Latin, Greek, and history at the University of Nevada, Reno (UNR); his mother was a homemaker. Judge Thompson describes the family home on Reno's Riverside Drive as one acre on the Truckee River with cows, chicken, and a large vegetable garden. He recalls milking the cows, weeding the garden, and serving as a marriage witness for a minister neighbor's wedding business.

In 1932, Thompson graduated from UNR (then the University of Nevada) with a degree in philosophy and English. In college, he joined the staff of the school paper and the debate team. His senior thesis—"The Philosophy of Law and Rights"—gave a nod to the career path he would take.

Thompson's memories bounce from family car trips, hunting, and fly-fishing with his father, to a variety of jobs through college. He remembers not being particularly adept at team sports but enjoying tennis, horseback riding, hunting, and square and folk dancing.

When he "knocked on the door" of Stanford Law School, he was admitted. Judge Thompson recalls favorite professors and taking the 1936 Nevada Bar Examination that, in those days, lasted five or six days. He practiced law with George Springmeyer until his appointment as an assistant U.S. attorney, later resigning when he was passed over for appointment to the top job. Judge Thompson has a keen memory for stories during his years of law practice and prosecuting at the U.S. attorney's office.

Appointed to the Nevada federal district court in 1963 by President John F. Kennedy, Judge Thompson served until his death in 1992. With nearly thirty years on the bench, he shares many stories and opinions about the courts, procedure, administration, judges, lawyers, and law clerks. Judge Thompson traveled widely throughout the Ninth Circuit sitting at the district court and on appellate panels; he was also active in the Federal District Judges Association.

When asked about his judicial philosophy, Judge Thompson said he was "a strong

believer in judicial precedent." As to judicial activism, he admits he was a "child of the past," explaining that there are situations where "I am sure I decided the way I decided because of experiences I have had."

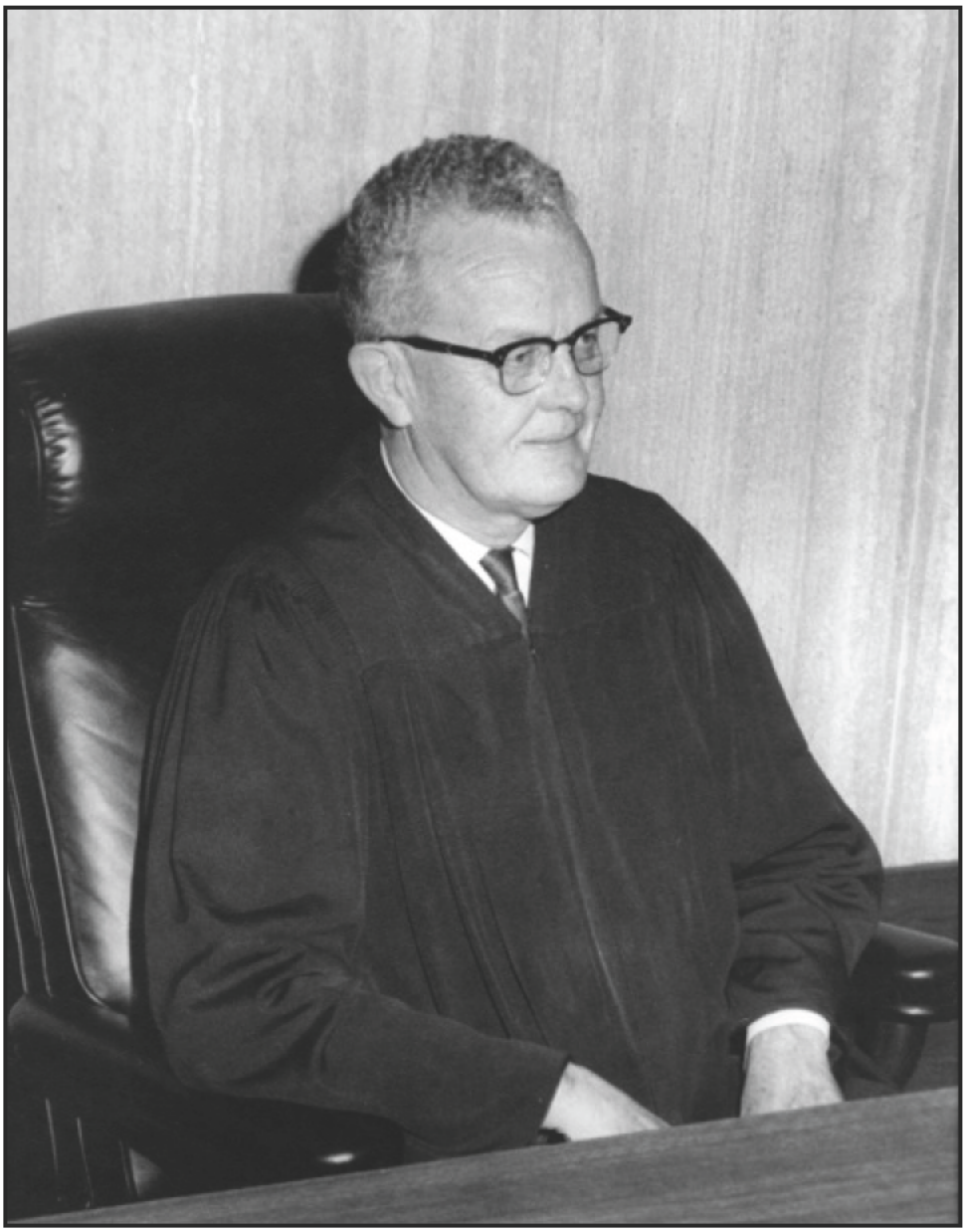
Judge Thompson's life was a balance of work and family. A long list of family and friends, and Nevada's federal and state judiciary attended a memorial service to Judge Thompson at the National Judicial College.* The sentiments expressed that day are evident in his oral history as a husband, father, lawyer, and judge who was an endearing and respected Nevada son.

Jay Sourwine conducted the oral history interview with the Honorable Bruce R. Thompson on February 10, 1988 in Thompson's chambers in Reno, Nevada. The interview was later incorporated into the Nevada Legal Oral History Project, a joint effort of the Ninth Judicial Circuit Historical Society (NJCHS), the Nevada Judicial Historical Society (NJHS), and the UNOHP. Begun in 2001, the project was intended to record the life stories of leading members of Nevada's legal profession and to educate the public about law and the courts by making those stories widely available through various media.

Members of the boards of NJHS and NJCHS compiled and vetted lists of potential narrators, ultimately selecting representatives from both the state and federal benches and bars. The UNOHP, under the direction of Tom King and his successor Mary Larson, recommended interviewers, most of whom were professional oral historians, and donated equipment and transcription services. Brad Williams, of NJCHS, coordinated the project from its inception. Susan Southwick, of NJHS, oversaw that group's participation. Patricia Cooper-Smith completed the copyediting and introductions. Alicia Barber, Director of the UNOHP since 2009, supervised the project's final publication and dissemination. The project was made possible by a generous challenge grant from the John Ben Snow Memorial Trust, with matching funds provided by the U.S. District Court for Nevada Attorney Admissions Fund, the Washoe County Courthouse Preservation Fund, and the Nevada State Bar. Thanks go to Susan Southwick and the Board of Trustees of NJHS, and to Jay Sourwine, who interviewed Judge Thompson.

Patricia A. Cooper-Smith
Carson City, Nevada
May 2013

*See, Thompson, Bruce R., 819 F.Supp. LXI: in memoriam, photo, 36 p.



Hon. Bruce R. Thompson,
U. S. District Judge, District of Nevada, 1963

1

Growing Up in Reno

Jay Sourwine: This is Jay Sourwine on the afternoon of February 10, 1988, in the chambers of the Honorable Bruce R. Thompson, U.S. District Judge for the District of Nevada, senior status. Judge Thompson, this interview, as you know, is on behalf of the Ninth Circuit Historical Society. Would you tell us your full name, please?

Honorable Bruce R. Thompson: Bruce Rutherford Thompson.

When and where were you born?

I was born in Reno, Nevada, on July 31, 1911, in Washoe County.

What are the names of your parents?

My father was Ruben Cyril Thompson, and my mother was Mabel Elizabeth McLeran Thompson.

When and where were they born?

My father was born April 30, 1878, in Wasco County, Oregon.

How about your mother?

My mother was born October 26, 1881, in Beatrice, Nebraska, or "Be-Atrice" as they say back there.

You were raised here in Reno?

Yes.

Lived here your whole life?

Yes.

What, if any, is your religion?

I was baptized in the Baptist church when I was about fifteen years old.

Is that the same church that your parents attended?

Yes. My father was an ordained Baptist minister, but he did not have a church. He was a teacher.

Where did he teach?

Well, initially in the Boise High School in Boise, Idaho, and then he moved to the Albion State Normal School. I think now it's Idaho Southern. From Albion, Idaho, in 1908, he moved to the University of Nevada, Reno.

Was he a teacher of general subjects, or did he have a particular interest?

He had a classical-education degree from Harvard University emphasizing Greek, Latin, and history. I believe those are the subjects he taught in Boise High School.

When did he come to the University of Nevada to teach?

That was in 1908. One of his jobs was as principal of the University Preparatory High School that they had at the time, which was part of the university, but it was created because some of the high schools in rural areas of Nevada did not provide a proper pre-college education for the students, so the university maintained this preparatory high school. I don't think that lasted very long. Then he taught Latin and Greek and history at the university until the Department of Philosophy was created and he was made the professor in the Department of Philosophy. His classical scholarship with his strong religious training and his interest in philosophical subjects had qualified him for that position.

Did he ever have a church?

No. He served in Protestant churches throughout western Nevada and northern California as substitute for the regular pastor of those churches.

Do you recall where he was originally ordained?

No. As a matter of fact, I don't even know what he had to do to become ordained.

How long have your ancestors lived in the United States?

I don't know exactly. I believe I could be qualified to be a Son of the American Revolution on my father's side. They were pioneers, and my grandmother and grandfather on my father's side were pioneers who moved from Kentucky or Tennessee to Oregon in the middle 1870s, and they eventually settled down in Albany, Oregon. I think my paternal grandfather or my grandfather on my mother's side emigrated from Scotland to the United States when he was a small child. I don't know when my mother's mother came to the United States.

Did your father work at the University of Nevada, Reno until he died?

Until he retired. He retired in 1948 at the age of seventy years.

Did your mother work outside the home?

No.

You have, if I recall correctly, one brother and one or more sisters. Is that right?

I have one brother and two sisters, plus an older brother who died from typhoid

fever when he was about five years old, I think. That was before I was born.

What are the names of your brother and sisters?

My brother's name is Gordon R. Thompson, and my older sister's name was Doris McLeran Thompson. She married Alfred G. DeSalvo, and my younger sister was Mary Adeline Thompson. She married Merle H. Atcheson.

Your brother, Gordon, was a justice on the Nevada Supreme Court for some years, is that correct? Do you remember when?

I believe he was appointed in 1961.

That was to fill a vacancy that existed on the court?

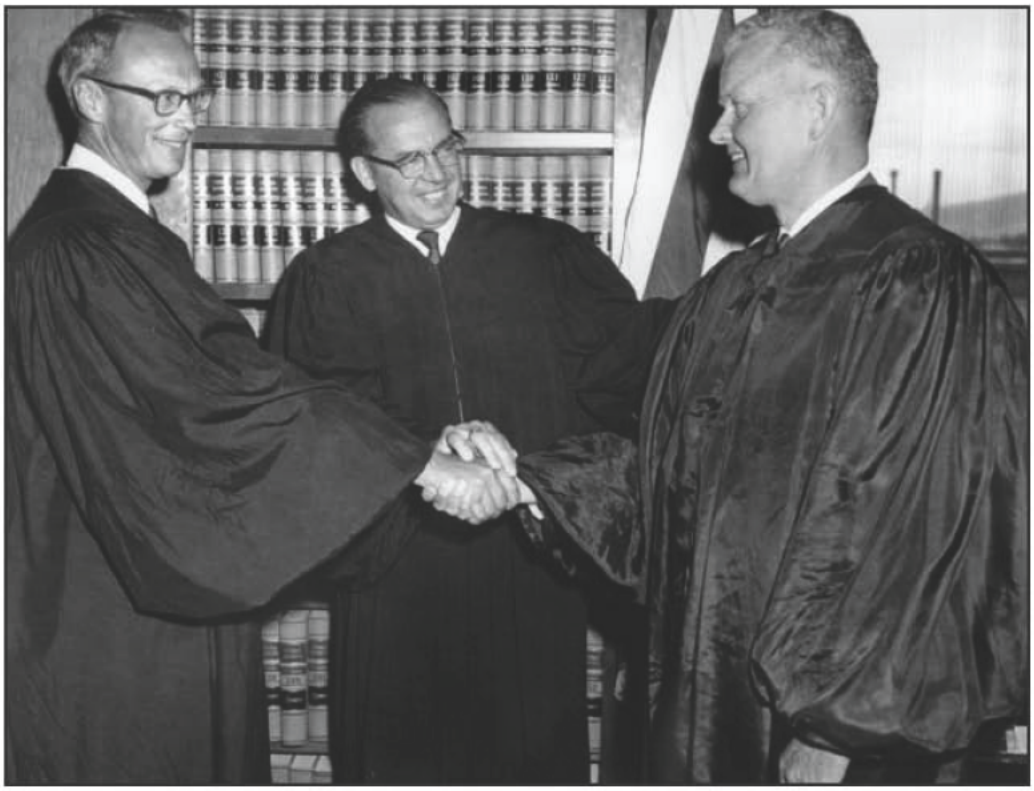
Yes. Justice Miles N. Pike had resigned, and Gordon was appointed by Governor Grant Sawyer.

And then he ran for reelection as required until he retired? Do you remember when that was?

I think it was 1980 when he retired. I believe his last election was the only contested election.

He won that election, did he not?

Yes.



Left to right: Justice Gordon Thompson, Nevada Supreme Court;
Chief Judge Roger Foley, U. S. District Court, District of Nevada;
Judge Bruce R. Thompson, U. S. District Judge, District of Nevada, 1963.

You were appointed to the bench in 1963. Who was the president then? Was it John Kennedy?

John F. Kennedy.

Were your parents Democrats?

Yes.

And that was your political affiliation as well?

Yes. When I first registered, I registered as an independent, but when I found out that I couldn't have any voice in the primary election to select candidates, I registered Democratic.

I'd like to go back and ask you to tell me what your earlier recollections are of growing up in Reno, where you went to school, where you lived.

Well, my grammar school was about a block from our home. Our home was on the Truckee River. We owned over an acre of ground there. My father, as a college professor, was not making any remarkable income, and we were all brought up to work. We kept cows and chickens and had a large vegetable garden on our property. My recollections of growing up are milking cows and weeding the garden. We, at one time, had as many as three Jersey cows and sold milk in the neighborhood in days when nobody had heard much about pasteurization. We grew enough corn to sell some to the neighbors, which I used to peddle in my little red wagon. Interestingly enough, the price for corn—sweet corn, which I sold in those days—was just about up to what we pay for sweet corn today.

Our neighbor was Reverend Brewster Adams. He had substantially the same size property that my folks had, plus a couple of additional lots that his father-in-law had purchased, and we all participated in the harvesting and selling of raspberries. I don't know how many raspberries there were, an acre and a half of raspberries. All the children who were old enough had to get up 4:30 in the morning with our parents and get out in the raspberry patch and pick raspberries until all the ripe raspberries had been harvested. Crates of raspberries were filled, and then they were taken down to Sewell's Market and were sold. That was one of my father's side operations to supplement his income.

Another unusual recollection of my childhood was the number of weddings I witnessed. Partially because California had passed a premarital-examination law, a good many people came to Reno from California to get married, and while the Reverend Brewster Adams, our neighbor, had by far the majority of the weddings, my father also married quite a few of these transients. I remember many, many times when Mrs. Adams would come to the back door of her house and look out to where we were working in the garden or with the animals and say, "We need a witness." So whoever was available, and frequently I was the one, would go over to the Adams' house and stand by the swinging door in the kitchen. Of course, we were unpresentable, filthy from working outside. We would just stand in the door and listen to the wedding, and then they would bring the marriage license out for us to sign as witnesses. I don't think I'll ever forget the Episcopal wedding service that both Brewster Adams and my father used.

How old were you during this period of time that you witnessed so many weddings?

Oh, I think maybe I was eight to eighteen.

Old enough to sign your name.

Yes.

What was your address at that time?

It was 1101 Riverside Avenue.

Is that the same as what is now called Riverside Drive?

Yes.

When you were a child, did you ever get to take vacations and go out of the area, travel at all?

Well, my parents were great campers. My father did have extra time during summer vacation, even if he taught in the summer session at the university, and there were several times that we made trips to visit his parents and relatives in Oregon. One of his brothers, W. Lair Thompson, was an outstanding lawyer in Portland, Oregon, and I worked in his office one summer before my last year in law school. Another brother was a surgeon in Salem, Oregon, and they all had children, and it was fun to go up there and visit the cousins.

What did you do in the law office that summer?

I worked on one case. It was called *Twohy Brothers v. The Northern Pacific Railroad Company*. It involved a construction contract for construction of the railroad up a canyon near Coeur d'Alene, Idaho.

How old were you?

That was before my third year in law school, so I guess I might have been twenty-four.

Why did you decide to go to law school?

I graduated from the University of Nevada in 1932 with a major in philosophy and English and a minor in Latin. That was in the depths of the Depression, and there weren't jobs available. I always had an inclination to be a lawyer, and my father was willing and able to send me to law school, so that's why I went. In those days, it was interesting compared to today, where you have to get within the top ten percentile, I think, of the LSAT and have an outstanding undergraduate academic record to be admitted to Stanford Law School. All I had to do was knock on the door and present my credentials as a graduate of the University of Nevada and pay $135 for the first quarter's tuition.

No advance application?

No.

I would like to go back to your early trips to Oregon. What mode of travel did you use? Did you have a family car that you used to take up?

Well, our first family car was a Maxwell touring car. It had a fabric roof—isinglass curtains with a fringe on top.

How long would it take you to get to where you were headed in Oregon?

Well, it depended on what luck we had, but I think normally it took three days. I remember one occasion, my mother had not learned to drive, and we were up on a long, deserted stretch of territory called the Madeline Plains north of Susanville, California. We were driving along, and the fan belt broke. My dad was no mechanic and didn't have much perception of what, if anything, he could do about it, but he knew we couldn't go with a broken fan belt because the

car overheated terribly; so he started to walk back to a little settlement we had passed, which seemed about ten miles back, and my mother and three children were in the car waiting. A cowboy came along riding a horse. He stopped and asked what the problem was. My mother told him, and he opened the hood and looked at the fan belt, cut a latigo strap (a piece of leather) off his saddle, wove the two broken ends of the fan belt together, put it back on the motor, and rode on off. My mother decided that she could drive the car. She started the car and turned it around and went back and got my dad. Of course, you didn't have to worry about traffic in those days.

Was that the Maxwell?

I think so, although, it was succeeded by a Dodge touring car, but I can't remember what years. That Dodge is one we took to visit my mother's relatives in 1921 in Peru, Nebraska, and it took us two weeks to get from Reno, Nevada, to Peru, Nebraska, which is fairly close to Lincoln, Nebraska. The roads were almost all dirt roads. I remember getting stuck in a mud puddle near Lovelock, Nevada. I think we had three flat tires between Reno and Lovelock, which is what, ninety miles?

About that.

I remember crossing a stream where the bridge had washed out on just two boards that had been laid across. On our way home, we went up through Cody, Wyoming. My dad had a shotgun in the car, and as we were driving along through the Wyoming desert, some young sage hen flushed up by the side of the road, so dad got out and shot three sage hen, I think, and we went on farther to a place to stop for lunch and had sage hen for lunch. Then we went on through the Yellowstone National Park, which was very interesting, and much more interesting in 1921 than it was in—oh, when did we have the conference...?

I think that the Ninth Circuit Conference up in Jackson Hole was in 1980. It might have been 1981 or 1982, somewhere in there. That's the last time we were up there. I suppose Old Faithful was still flourishing?

Oh, yes. She was doing fine. We also made at least two trips to Yosemite National Park and lots of fishing trips. My father was an avid fly fisherman and also a hunter—a bird hunter—and he used to take me along from the time I was old enough to do anything.

I know from experience that you hunted for many years because we went together.

Yes.

Do you still hunt at all?

No. I can't climb those mountains anymore.

Well, you used to be able to out walk me. Was there more than one high school in Reno when you were in high school?

No. Reno High School was the only high school. The first junior high school was built when I was in the seventh grade of grammar school, at McKinley Park, and we transferred to the Northside Junior High School in the middle of the seventh grade. Reno High School at that stage had become a three-year school, and I took what you would call the tenth, eleventh, and twelfth grades at Reno High School, which was located on West Street. We walked to school all the time. It was

well over a mile, about a mile and a quarter, to Northside Junior High School and Reno High School.

Did you have a choice of colleges?

No. I never ever gave it a thought. I knew that my parents just sort of anticipated that I would go to the University of Nevada, and I believed that was the only choice I had.

Was there anything different or unusual about being a student there while your father was a professor?

I didn't find it so. I majored in his department. When I finally took a thesis course in my senior year, he had the president of the university grade the paper I wrote.

Do you remember the title of your thesis?

It was called "The Philosophy of Law and Rights". It was a critique of a book that had been written by a man named Hocking with that title. That's all I know about it.

Is your brother, Gordon, older or younger than you?

He's six and one-half years younger.

What sorts of things did you read when you were a boy, when you weren't working with the cows or in the garden?

Well, somebody wrote a whole series of books that had names like *Left End Edwards* and *Left Tackle Thayer* and *Quarterback Quinley*. I can't think of the author's name.

Were these works of fiction?

Yes. They were just stories about high-school athletes. Then there was an author named Jeffrey Farnol. I think I read every book that he had written that I could find in the library. They were mostly about—I guess it would be—the sixteenth and seventeenth centuries in England. *Robin Hood* was a great favorite. Walter Scott; I read two or three of his books; and *Black Beauty*.

Were you encouraged to read by your parents, or is that something you just...?

Oh, I assume I was. I don't think they had to encourage me. My dad read all the time for recreation. He would read western novels, and I read a lot of those, same grade, same authors. I think a son generally tends to mimic his father's activities.

Did you have music in the home when you were growing up?

Yes. We had a piano, and I took piano lessons for two years. My sister, Doris, is a very accomplished singer. My sister, Mary A., was the only one who really took to the piano and stayed with it, and she is an exceptionally good piano and organ player. We always had a lot of community singing around Christmas time and holidays.

Did both your parents play the piano?

Neither. Well, my mother could play a little bit, but nothing like my sister.

Did your mother go to college?

I don't think so. If she did, I don't remember. I don't think she did.

Was either of your parents active in politics?

I wouldn't say so. I remember one time, my father engaged in a public debate with a lawyer names H.R. Cooke at the so-called State Building in downtown Reno on the subject whether the running of racehorses and racehorse meets and pari-mutuel gambling should be permitted in Washoe County. I don't know whether you would call that political activity or not.

Do you remember what year that was?

No.

Was any form of gambling legal in Nevada at that time?

I think probably not. I think it was probably before 1932.

Which side of that issue did your father advocate?

He advocated that to permit that kind of activity in Washoe County would bring law violators to Reno, would add nothing to the economy of the county, and generally would be morally wrong. He had a very strong sense that gambling was immoral.

Do you recall the occasion for that debate?

No.

Was the lawyer named Cooke related to Tom Cooke?

He was his father.

Other than the chores that you described and the selling of garden produce in the neighborhood, what jobs did you have in high school and college, if any?

In high school, I just remembered, I had a job delivering papers. I had the most peculiar paper route for the *Reno Evening Gazette* anybody ever had. After crossing the bridge, which is now the intersection of Riverside Drive and Booth Street, I delivered papers to the farms on Booth Street, out California Avenue, up as far as Plumb House on the corner of Plumb Lane and Hunter Lake Drive. It was not a heavy route in numbers of papers, but it was pretty difficult going in the wintertime.

How did you go around the route—walk, bicycle?

I had a bicycle.

What kind?

My first bicycle was my father's bicycle. My father used to ride to the university on a bicycle, and then after he got the first automobile, he gave his bicycle to me. I don't remember what kind it was, but after that, I got a job (this is still in high school) at the *Gazette* as an inserter, they called it. They would print the paper in two sections on this flatbed press, and then the inserters would shuffle the sections together and get the papers ready for the carrier to take out. Then I finally ended up with a job taking the papers off the press, which was the next step above being an inserter.

Those jobs lasted you through high school?

Yes, well, then one high school summer, I got a job working at Sewell's Market downtown. I resupplied and restacked the

shelves and filled in when there were too many customers for the salesmen available, and I helped them out. On another occasion I got a job at the Reno Motor Supply Company as a shipping clerk. That company supplied auto parts throughout Northern Nevada and adjoining California counties. My job was to take the orders and fill and package the orders and get them ready for mailing or shipment, whatever we were going to do with them.

I think it was my first summer in college, I got a job at Frank Brothers Soda Works helping a Frenchman by the name of Taschoies make ginger ale and sparkling water and bottling it and so forth; then I drove the delivery truck to deliver beer and soft drinks and bottles of soda water to bars in downtown Reno, which was a good job. One summer I worked—I think this was during a college summer vacation, too—in a service station up in Truckee, California. That was the summer of the Baer-Uzcudun championship heavyweight fight in Reno. I will always remember being awakened about three o'clock in the morning by Louey Carbona, who owned the station. He telephoned and said, "You'd better get over here. We got a crowd of people." It was just a traffic jam of automobiles coming over the mountain from California and pulling in to the service station to get gas and have their windshields washed. I never worked any harder in my life as I did then for about five hours, servicing those automobiles at top speed. It was unimaginable now—of course it was only a two-lane highway then—but it was just an endless string of cars backed up there for service.

That was the Old Donner Road? Donner Pass Road?

Actually, the service station was on the main street at Truckee, up towards the western end of it. And, I guess in high school I spent one summer keeping Wayne Hinckley's Associated Service Station, on the corner of West Street and Second Street, open all night. He decided to have twenty-four-hour service, and I had the shift from 10:00 p.m. to 6:00 a.m., which wasn't too difficult because the core of the problem was staying awake. There was something to do but not a lot, and then I would get home from that job shortly after 6:00 a.m. and be faced with helping to pick the raspberries for market, so it was a pretty busy time.

In high school, did you participate in any athletics?

No. I am not athletic. I guess I could be described as somebody that has two left feet. I am not, however, completely spastic. I just have never been proficient at team sports. I have been quite physically active my entire life, as a member of the Reno Tennis Club; the Nevada White Hats, a horseman's group (I took part in the 1960 centennial rerunning of the Pony Express); fishing, hunting, square and folk dancing, and vegetable gardening.

How about student government? Did they have a student government then?

They had one. See, I was in an unfortunate position of having been persuaded by my father to finish high school in three years, so I was a little bit younger than the other people in my class, and I can't say that I was socially very popular.

Other than attending courses in college, what did you do? Did you have any extracurricular activities at the university?

Sometimes I think I spent most of my time on extracurricular activities. I got in the

lineup for basketball manager and ended up as the basketball manager in my junior year. In those days, if you were the manager of a major sport, you got a block "N" sweater along with the athletes, so I got a block "N" sweater for that. I was on the staff of the university paper called *The Sagebrush* all four years, I think, and was the sports editor probably my fourth year. I was on the staff of the university annual called the *Artemesia* for three years, maybe four, and was the assistant editor. I was the president of Blue Key. It was a service organization.

That's an affiliate of the Kiwanis Club, isn't it?

I don't know. I don't think so.

Did they have fraternities at the university?

Oh, I engaged in debate. I was the manager of the debate team in my senior year. I belonged to a social fraternity, Alpha Tau Omega.

Did the Sundowners have a group on campus then?

Yes, they had a group, but I didn't belong to it.

With all that extracurricular activity, when did you find time to study?

Well, I've always been able to concentrate and avoid distractions. It's easy to find time to study if you want to do it. In fifteen minutes, you can accomplish quite a bit if you really pay attention. I would study at home. We had breaks in our class schedule when we would study.

Do you recall any particular friends that you had in college?

I had quite a lot of them. Harold Taber was one of my college friends. We were in the same class; we worked together on the *Artemesia*. He was the business manager of the *Artemesia*. Tank Smith, who recently died, was once the mayor of Reno. We were good friends in college, and after college we worked together on the alumni board of trustees. We oversaw the activities of the Alpha Tau Omega fraternity until the mortgage was paid. John Griffin, Roy and Bob Bankofier, Elbert Walker—most of my good friends were fraternity brothers.

Harold Taber became a lawyer and a district judge here in Nevada?

Yes, that's right.

Did he go to Stanford with you?

No, he went to Boalt Hall at Berkeley.

Roy Bankofier was a mayor at one time too, wasn't he?

That's right.

Why did you choose Stanford?

I think I thought it was the best available law school. I don't remember any person persuading me to go to Stanford.

Were you a Boy Scout?

Yes.

To what rank did you rise?

I had several merit badges. As a matter of fact, your father was my Scout Master in our Troop One for some period of time. Troop

One was in the Baptist church. I never got to be an Eagle Scout, but I did quite a lot of the preliminary work.

Do you remember what merit badges you did get?

No.

Do you remember any of your college debate subjects? Do any of them stand out?

I'll tell you a college debate that stands out. I think it was with the University of Utah. I think it was my first debate, and I was very nervous. We were on the rebuttal side of some topic, and the debate coach thought that because I was so nervous about trying to make an extemporaneous speech that I should memorize the argument I was going to make. So I did; I memorized it. I got up there, and these two men from Utah just got up and told jokes and didn't say anything about the argument I was supposed to rebut. I was just mesmerized. I got up and reeled off this speech. It had no relationship at all to what was going on. I decided after that experience that I would never memorize another speech, and I never have. That was a very embarrassing experience.

Who was the debate coach?

Robert Griffin.

How was your health, generally, through your early twenties?

Well, from about age six to twelve, I had a periodic intestinal illness of some sort. Nobody understood the reason. I would be running a fever and so forth, and the treatment was to put me to bed and give me a round of calimo, we called it. Then the treatment would be concluded with a dose of castor oil. I would be laid up for a week to ten days and out of school. Then the episode would pass until the next one came along. I can't remember how frequent they were, but I know when I was about seven years old, the doctor surmised that I might be allergic to milk, so he took me off milk. These episodes continued three or four times a year until I was twelve years old, when I had an acute attack of appendicitis and had an appendectomy in old St. Mary's Hospital. It's interesting compared to modern day treatment, when they get you up the next day after the operation, and you're out of the hospital about the third day. I had to stay in St. Mary's Hospital for two weeks, and then when they finally let me out, they didn't want me to do any sort of physical activity for a while. After I had my appendix out, everything was fine; I never had another illness. I think I must have had a rotten appendix all that time. It would flare up and nobody knew about it.

Did your health then stay good until your heart attack?

Yes. Well, I was in an accident in law school, which didn't do my health any good, but I made a good recovery.

What injuries did you have then?

I had a compression fracture of three vertebrae. I was three and a half months in Palo Alto Hospital in a cast.

Was that an automobile accident?

Yes. My doctor was Dr. Blake Wilbur, who was the son of Ray Limon Wilbur. He had

been secretary of the interior and president of Stanford University. He did an excellent job.

Did that set back your law school?

One year.

Did that year make up for the year you gained by finishing high school in three?

What do you mean by make up? When I graduated from Stanford Law School I was twenty-four—a month short of being twenty-five. So I actually graduated from college when I was twenty years old. Then on July 31, I became twenty-one.

What, if anything, do you remember about World War I and the impact it had on your family?

The biggest impact it had was on my cousins on my father's side. My uncle Lair Thompson's family and my uncle Fred Thompson's family were caught in the influenza epidemic, which I think resulted in the deaths of three children. There was no particular impact on my immediate family, except that my father was very active in the war bond drives every month. My cousins on my mother's side, the ones back in Nebraska, were in the military service. Nobody was killed.

Were you ever in the military?

No.

You were past draft age by World War II, I should imagine.

No, I wasn't. When World War II started, professor James Brenner, who had been one of my teachers at Stanford Law School and who was a retired commander in the Navy, reactivated his commission and became a recruiter of people to become armed guards on a merchant ship. He and his recruiting group came to Reno to interview a lot of people, and I at that time was an assistant U.S. attorney. I went over for an interview, and he knew about my accident when I was at Stanford and the injury I had suffered. He told me that I couldn't pass the physical and that I'd better just stay where I was and work for the U.S. attorney's office.

I followed that along until about 1944, right toward the end of the war. I think it was late 1944, and they were really scraping the bottom of the barrel for draftees. I got a notice to go to Fort Douglas—I think that's in Ogden, Utah—for the physical examination. I went to Fort Douglas, and they marked my back all up with iodine and gave me a lot of x-rays and passed me for enrollment in the military service. I came back home expecting to be drafted within a month, and during that one month, the head of Selective Service changed the regulations and decided not to draft any more. I can't remember whether it was an age limitation, or it was people with children. Anyway, there was some change in their regulations so that I was never ordered to report for induction, which is probably a good thing because I have a lot of queries in my own mind about how I would react in an emergency.

When and where did you meet your wife?

When I was in law school, I was in this automobile accident. I think it was April 1933. I stayed out of law school a year until the commencement of the spring quarter, 1934, and I think I had a blind date with my wife

during that period. I spent a lot of time up at Alpha Tau Omega fraternity house while I was convalescing, and I think I took her to a fraternity dance. That's as close as I can come.

When were you married?

You think I can't remember, don't you? September 11, 1938.

I never thought for a minute you wouldn't remember. How many children do you have?

Three.

Two sons and a daughter?

Our first child was Jeffrey; he is a psychiatrist practicing in Medford, Oregon. His home is in Jacksonville, Oregon, which is a little historic mining community about five miles from Medford. He was married, and has three children; two of them are married. I have a great-grandchild on the way. He is now divorced and single, which seems to be a very common experience. Jeff graduated from Dartmouth College and then went to the University of Oregon Medical School. My daughter Judith attended Stanford University and graduated there. She is married to a psychologist, Charles Holt, who practices here in Reno. She teaches English at Reed High School on the east side of Sparks. They have two children: Scott Holt, who is eighteen, I think; and Zachary Holt, who is nine.

Was Judith your second child?

Yes. Then our third child is a son named Harold. He is a lawyer here in Reno. I never had a chance to practice with him because I was appointed to the federal bench before he went to law school. He just got married about two years ago, and they don't have any children.

Did your wife go to college?

Yes. She's a graduate of the University of Nevada.

What did she major in?

English, art, and drama. I don't know whether dramatics is an activity, or a course of emphasis where you could get a major or minor in those areas in Nevada.

Judge, tell me a little bit about your wife's family, her parents.

Her mother, Frances Dodd Creet, was brought up on a ranch near Ely, Nevada, at a place called Cherry Creek. I think it was called the Campbell Ranch. I don't remember when her parents moved to Reno, but she graduated from Reno High School. Her father, Harold H. Creet, was born in Illinois. I think he was brought up by stepparents and at an early age, perhaps when he was seventeen or eighteen, he left home, came West and ended up in Goldfield, Nevada, during the heyday of the mining activity in Goldfield. After he moved to Reno, he was in the wholesale grocery business with a company called the W.I. Mitchell Company. I don't remember when he and his wife were married, but my wife, Ellen, was born in 1916, so it was before then.

Did you know Ellen in high school?

No. Her high school class was in 1933, and I graduated in 1928.

There was a man associated with the early history of this area named Snowshoe Thompson. Was he any relation to you?

No. Quite recently, I was at this Westerners International Corral dinner meeting. A man named Bill Berry, a newspaperman, knew a lot about the skiing in Nevada and California in the early days. He gave us a slide lecture on the early use of skis in the mountains in which Snowshoe Thompson played a major ski part, but he was a Dane, I think. As far as I know, I don't have any Danish in me. I have a lot of other things.

What is your ancestry in that regard?

English, Irish, Scottish, Dutch, and French.

2

Law School and Law Practice

Were there any particular teachers you had in law school that you feel had more of an influence on you?

I think George Osborne was one of the greatest teachers I ever ran into.

What subjects did he teach?

He taught a first year class called "Remedies and Personal Property," which is not very descriptive of the course. It was about early English forms of action and development of the actions of trespass, trespass on the case, and assumpsit, and so forth; all the formalities that were involved. Then we got into the questions of possession of personal property and wild animals, and all sorts of things like that. Then he taught securities.

What was it about him that made him such a good teacher?

Well, he was highly skilled in the Socratic method. He asked very searching questions and didn't hesitate to have fun with the students if they didn't appear to be as bright as he expected them to be. His lectures were, I thought, quite logical and understandable, and I really enjoyed him as a teacher. I think it was at Stanford Law School I learned not to believe in the maxim "publish or perish" for professors and teachers because the best professors I had in law school, like George Osborne, Clarke B. Whittier, and Dean Kirkwood, had the least national reputation from having published things. Arthur Cathcart was another one. The professor there who was supposed to be the great genius, Walter Bingham, who taught trusts and water law, I thought was one of the worst teachers that I ever had.

How did they teach law at Stanford then? Was it basically the Socratic method, or case method?

They used the case method, and casebooks. You had an assignment of a number of cases in preparation for the following class. We

all read the cases and summarized them on interleaving paper. It was kind of tissue-like paper, tough enough to take typing or handwriting. It had a gummed edge, and you would put that in your notebook along with you notes of the class discussion or lectures on that particular case. The professors had different approaches. Some of them spent almost the whole class in questions and answers and discussion of particular cases, while some of them, like Dean Kirkwood, who taught real property and future interests, spent most of the class period lecturing. I think it's a personal thing with the particular professor.

Do you recall what your standing in law school was at the time of your graduation?

Well, I recall it to this extent: I didn't make Order of the Coif, but I was close.

Did you participate in a law review?

We didn't have a law review.

Were there any extracurricular activities at the school while you were attending?

There were some. For instance, I roomed one year with George Vargas. He participated both in moot court and in a sort of an outreach program where the more advanced students could go to sort of a clinic in Oakland where they advised indigent people with respect to their rights in various circumstances. I didn't participate in either moot court or that other activity.

Were there any extracurricular activities that you did participate in at Stanford?

I can't remember.

By the time you had returned to Stanford after your automobile accident, you had already met your wife. When were you married?

September 11, 1938.

So that was after law school?

Right. I didn't formally graduate from law school. At the commencement of my third year, I had gone to Automobile Row on Van Ness Avenue in San Francisco, and purchased a second-hand Nash coupe for $75 and used it for transportation. When I finished my last examination in law school, I climbed into that and came home and I didn't attend any graduation service.

Why not?

I just thought I ought to get back and start getting ready to get to work. I had been a burden on my family for long enough, and the ceremony itself didn't mean much to me; the diploma did.

Did they send you the diploma?

Oh, yes.

What was your personal financial condition while you were in law school?

I worked each summer. I can't remember what jobs. I made a little money, and my dad sent me money for tuition; I think he sent me $75 a month for board, room, and incidentals — books, and so forth. I wasn't affluent, but I wasn't having any problems. My father had a rich half-sister who had given each of her nieces and nephews some amount of money, which he was taking care of for us. I think I had something like $2,000 or $3,000 he had

invested for me. I just signed that over to him when I went to law school.

Do you recall what sort of outside reading you did during college and law school?

I don't recall that I did when I was in law school. I think I went to the movies once in a while, read newspapers. In college I was really busy. I didn't have time to do a lot of reading.

When you finished law school, what kind of law did you want to practice? What kind of lawyer did you want to be?

Well I can tell you what I didn't want to be. The transitory divorce business was in full swing in Reno at the time I moved back up here. That's something I engaged in because it was bread and butter, but I never enjoyed it particularly. I always thought I would just have a general practice. I had the perception at that time—which no lawyer could have now, I guess—that if you had a client, you did everything that had to be done for that client: from going to the municipal court on a DUI; to going to the justice court on a small civil action or whatever problems he had; to drawing wills and deeds and real estate transactions; and any problem. That's what you were supposed to be able to do. You could generalize like that in the 1930s, 1940s, and 1950s, but you sure couldn't do it now.

Is that because you believe the law has become either sufficiently complicated, or sufficiently specialized that one lawyer can't do it all?

Both, yes.

Did you serve in that capacity for your clients when you were in private practice, doing everything for them?

Yes.

Did you have to take a bar examination in Nevada in the 1930s?

Yes.

What kind of exam was it?

Well, it lasted for one week. The first day, they did something that I think they ought to reinstitute in the bar examination process. They gave you a statement of facts, turned you loose in the law library, and asked you to identify the legal problems that were involved in the statement of facts and to write a memorandum of points and authorities with respect to those. That was the first day of the examination, which I think is important, because over the years I have found that quite a lot of lawyers don't have much of a conception of how to find the law and what to do with the reference books that are available. Then we had four solid days, eight hours a day, of essay questions. That took us through Friday. Then on Saturday morning, the members of the bar examination committee would meet with us and ask us questions on Nevada history and legal ethics.

Were those individual meetings, or with all of the examinees?

We were all together. Over the years, with the increased numbers of applicants for admission to the bar, that extensive form of examinations just become too burdensome for the board of bar examiners. What have they got it limited to now, two days of essay questions and one day of multi-state examinations?

I think there are two multi-state examinations. There's the multi-state bar

examination, and multi-state professional responsibility examination dealing with ethics. They do not have to be, and usually are not, taken at the same time. Either one or two days of essays, and, frankly, I don't remember currently what it is. I don't serve on the bar examiners. It may only be one day of essay questions.

I ought to know because my law clerk's taking it. I just tell them that they don't know how easy they have it.

How many took the bar exam the year you did?

1936? I think there were fourteen.

Was that for the whole state?

Yes.

Where was the exam given?

In Reno. In 1936, Las Vegas had a population of about 3,500 people.

Do you know where you finished in the bar exam? Did they rank?

Yes. I was first. The reason I know that is because the supreme court issued an order admitting certain applicants who had passed, and they listed them in the order in which they were graded. It was dated October 2, 1936. A year and a half ago, Bill Woodburn and I got together for lunch on October 2, 1986. We were two of the admittees. The only other survivor that I know is Mrs. Sally Springmeyer, who lived down in Gardnerville, and who was my former law partner.

She is retired from the practice?

Yes.

What did you do when you started practice?

Well, Mrs. Springmeyer, for my first two years at Stanford Law School, was a fellow student. For some reason or another, she transferred to USC for her third year. I don't know why. I met her husband, George Springmeyer, once in a while when he visited Stanford. His wife was a student, and he offered me a job when I graduated, so I didn't have any problem.

What kind of firm did George Springmeyer have?

He had a one-man office at that time. His main type of practice was the divorce business, but he did have some ranching clients.

Where was the office located?

It was in the former Farmers and Merchants National Bank building on the corner of First and Virginia Streets.

Is that where the First Interstate Bank tower now sits?

Yes, the same place.

What kind of arrangement did you have with Mr. Springmeyer about your salary? Were you paid a percentage of what you brought in, or hourly?

He paid me $100 a month to help with his cases. There were a number of good cases, good civil litigation in addition to the divorce business. In addition to the salary, he let me have any divorce fees that I myself generated. I would take care of a lot of his divorce clients, try the cases and so forth, and prepare them,

but if I had any that came to me personally, I could keep them. As a consequence of that, the first year of practice I ended up making about $400 a month, which was terrific in those days.

Did you have to contribute to the office overhead?

No.

Was it just the two of you?

Yes. Then after a year, he offered me a partnership, so I became a partner. I think we started out on a twenty/eighty basis. His wife was also a member of the firm, but her principal participation was to engage in social welfare work and acquire a client who had no ability to pay, but had a problem. Then she would turn him over to me, which is not something that disturbed me particularly.

What sorts of social welfare clients did you get that way?

Well, there was a lot of racial prejudice in Reno at that time, and Sally was well acquainted with some black people who lived in Reno and had problems. Just run-of-the-mill problems like wills or divorces, or contractual negotiations, or arrangements and things like that.

How would you describe your political philosophy in those years right after law school? I don't mean by the question to suggest that it's changed, but that's another question.

I believed in Roosevelt's policies and supported his programs with exceptions. He engaged in his Supreme Court packing plan after the chicken decision*, after the Supreme Court had knocked out that principal program he had. I can't remember the name of it. He was going to pack the Supreme Court by enlarging it and appointing people who had his philosophy or, at least, his philosophy of what had to be done in order to restore the economy of the country after the stock market collapse in 1929, and the closure of most of the banks in the country. I just didn't believe that that was any way to do it. I had too much respect, probably misplaced, for the Supreme Court, and didn't think that it ought to be monkeyed with for political reasons, so I opposed him on that. Then when he decided to run for a third term, I didn't like that either. I didn't think the president should be continued in office past two terms. That was sort of a step toward a monarchical form of government, if that's what you want to call it. So I parted the ways with him on that part, too. Otherwise, I think the economic programs of the New Deal were appropriate and helpful.

Were you politically active during that period?

I don't think that my activity, which started with going to precinct meetings and county conventions, commenced until about 1948 or thereabouts.

In what ways did you oppose President Roosevelt's court packing efforts? Was it simply a personal decision that you were opposed to, or did you speak out against it?

I am sure I did in private conversation, but I didn't make any public statements about it.

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*Also known as "The Sick Chicken Case." A.L.A. Schechter Poultry Corp. v. U.S., 76 F.2d 617 (1935).

Trace for me, if you will, the evolution of your law practice, not so much in terms of the kinds of work initially, but with whom you practiced. Did the Springmeyer-Thompson firm stay together for a long time?

Well, we were together, in effect, until I was appointed to the bench, or almost until then. From 1936 to 1942, I practiced with George Springmeyer. Then in 1942, Thomas O. Craven was appointed U.S. attorney, and he appointed me assistant U.S. attorney, one of his assistants. At that time, the U.S. attorney had an office in Carson City, as that's where the federal court was held, and he designated me to man the Carson City office. Then my family and I moved to Carson. We lived there for about six months, until they decided to close the Carson City office and concentrate everything in Reno. So I moved back to Reno. In those days, the U.S. attorney and his deputies were permitted to have private practice, so I took a reduced share of the profits of Springmeyer and Thompson, but I still continued to practice over in the private office as well as in the government office as an assistant U.S. attorney. That state of affairs continued until I resigned as an assistant U.S. attorney in 1952. I spent ten years as a federal prosecutor and, at the same time, was engaging in private practice.

Why did you resign?

I guess I resigned because the U.S. attorney, Miles N. Pike, resigned, and I wasn't appointed to fill his place. That's the reason I can think of.

Did you want to be U.S. attorney at the time?

Well, I would have accepted it. It was a prestigious job in Nevada.

Was Thomas O. Craven, who first appointed you, the man who later became a state trial court judge here in Reno?

Yes. And I had the pleasure of returning the favor, because after he lost a contested election for the district court judgeship, he needed some financial support. I was able to appoint him United States Magistrate.

During that ten-year period, did Springmeyer and Thompson take on additional lawyers?

No, not during the ten-year period. Mead Dixon became a member of the firm about 1937, and a year or two later we hired a man named Bob Groves, who is now deputy city attorney, as a law clerk, so to speak. But that was because after I retired as assistant U.S. attorney and got more active in the practice, I got so busy we had to have more help.

You told me you started to become politically active in 1948 in the sense of attending precinct meetings, county conventions. Was that in the Democratic Party?

Yes.

What made you decide to start doing that?

I don't know.

Did you ever run for public office?

I ran for the board of regents at the university.

Were you elected a regent?

I was elected in 1954 and served for four years. I think what prompted me to file for the board of regents was that I

had been involved earlier in the defense of a university professor who had been discharged by President Minard Stout with the approval of the board of regents for alleged insubordination. We had an administrative hearing on the university campus, and that action by the president was sustained. We got a writ of *certiorari* from the Nevada Supreme Court, alleging that there was no evidentiary support for a charge of insubordination. The day I argued that appeal before the supreme court, after we got through with the arguments, I was so exercised about the matter that I walked across the street to the Capitol building and filed for the board of regents.

Are those contested elections?

Yes, but I can't remember who my opponent was.

You served a four-year term?

Yes, and then I ran for re-election and was defeated by Dr. Louis Lombardi and Mr. Newton Crumbley, who were much better known statewide than I was, and probably better people too. I think Dr. Louis Lombardi had the longest tenure on the board of regents of anybody who served on it.

Did you ever run for another public office?

No.

Describe for me, if you will, some of your early cases—things that are memorable for one reason or another—as you look back at the time you practiced law.

Do you want me to tell you about the Paiute Defense League?

Certainly.

In 1936, and later when I started to practice law, the federal government did not have any method of remunerating attorneys appointed to represent indigent defendants. We had a group of young lawyers in Reno, which we informally called the Paiute Defense League. We were called upon frequently to handle cases in the federal court. Most of the prosecutions were for unlawfully disposing of intoxicating liquor to an Indian man or woman, which is no longer an offense. It was at that time. The first case I was appointed to was one against a man named Murphy, to which Bill Woodburn was also appointed. He talked to his father about it, and his father told him—he was a very experienced trial lawyer in Nevada—that about all he could do would be try to get an Irishman on the jury. Bill and I went over to try the case, and we had to use all ten of our preemptory challenges. There was one man left in the courtroom as a prospective juror. His name was Murphy, and he was called to the jury box on our last challenge. After the case was tried, the jury went out for a long time, and finally came back with a verdict of "not guilty." Bill Woodburn talked to one of the jurors later and asked, "What was the vote on the first ballot?"

The man said, "Eleven to one."

Bill said, "For acquittal."

The man said, "Oh, no, for a conviction."

He said, "Mr. Murphy said that nobody named Murphy was ever going to be convicted of an offense like that while he sat on the jury, so he just hung on long enough so that we all changed our vote to acquittal."

I had the opportunity to improve that system a little bit before the federal government decided that it would be appropriate to pay something to lawyers who were working in the federal system as

attorneys for the indigent defendants. When Judge Roger Foley Sr., was appointed federal district judge in 1945, I still thought that that system of picking on the same small group of lawyers to do all this free work was wrong, so I persuaded Judge Foley to list all the lawyers on his list of attorneys for indigent defendants. I think there was an age limit, but it increased the number of attorneys available for appointment by twenty or thirty times, and on serious cases he would appoint a very experienced attorney. But they still didn't get paid anything until—I don't know when they passed the law.

I think it was in the 1960s, toward the end of that decade. My memory is, Judge, that when I was your law clerk in 1965-66, you were still appointing people from a very large list. I don't remember whether they were being paid.

I think that's right. I think it was late 1960s when the government started to pay.

Was there much resistance within the bar to having that indigent appointment list expanded so drastically?

No, I don't think so. They might get appointed one or two cases a year and, of course, the majority of the cases were handled on pleas, so it didn't take a lot of time. I remember we had a SEC case, which was a complicated prosecution, and Judge Foley appointed Norman Samuelson to represent the defendant. Mr. Samuelson had had lots of experience as an attorney in New York City before he moved to Reno, and I think that trial lasted two weeks. He mentioned to me that it was a real hardship on him.

There was a case, which you were involved in that is in the Nevada Reports relating to the construction of your home. It's Thompson v. some labor union, I think, or a building trade school.

The Building Trade Council, yes.

Tell me about that. Did you handle it yourself as counsel, or did you have counsel?

My law partner, George Springmeyer, tried it. I prepared the pleadings and briefs and so forth, jury instructions. It was a case involving construction of my home. Because I didn't think I could afford the bids I had received, I thought I could save money by being my own contractor, and I hired a man named Robert Ross as a superintendent. After we barely got started, I got a notice from the Building Trade Council that Mr. Ross was not in good standing with them because he owed them a fine from some other job. I talked to Mr. Ross about it, and he said it was a totally unjustified fine, and he didn't want to pay it.

I had a meeting with the labor leaders and told them that I wanted to hire union labor, but I wasn't going to make Mr. Ross pay a fine that he said he didn't owe. They didn't agree with me and put me on their black list, which they called a "we do not patronize" list, and refused to let me hire any union members. We got as far as we could with non-union labor, but, finally, Mr. Ross told me that he couldn't get the house finished without using some union subcontractors.

So I went over and had another meeting, and told them that Ross was willing to pay his fine and get himself squared away. They said they'd let me know. A couple of days later I got a letter from them saying that if I'd pay $1,000 to Eagle Valley Children's' Home, they'd take me off the "we do not patronize" list; otherwise I'd remain on it. I brought suit against them. Right away, after I filed suit, they

withdrew the letter. We got our construction back under way within a couple of months, but I didn't withdraw the suit and went ahead and tried it, and got a jury verdict for $6,500, as I recall.

What year was this?

I think it was probably 1951.

Do you remember how much the fine on Mr. Ross was?

I think it was $50, but the supreme court sustained the verdict and held that my conduct was justified. There actually had been substantial damage, because during the time that the job was held up, I had some kiln dried lumber to finish the inside of the house stored inside the house. It was a very bad winter that winter, lots of snow, and the lumber absorbed a lot of moisture and warped. We still used it, but it didn't do as good a job as it should have.

What did you sue them for? What were the grounds of your lawsuit, extortion?

Yes, extortion on the payment of $1,000, and also that it was an unfair labor practice for them to insist that I compel Mr. Ross to pay a fine that he claimed he didn't owe.

What impact, if any, did that case have on your subsequent approach to labor cases after you became a judge?

I don't think it had any. I didn't have any prejudice against labor unions as such. As a matter of fact, I always thought the unions—at least at the time the labor movement developed—were a necessary part of our society to combat the selfishness of the entrepreneurs and industrialists. When my son, Harold, was attending Hastings Law School, there was a professor there named Joseph Grodin, who was a labor lawyer. He had appeared before me several times. He had occasion to mention one of the cases before this Nevada judge in this labor law lecture, and commented that I was a very good judge, so I think that's an indication that I was impartial. The case did have an effect on me politically, because Senator Patrick A. McCarran tried to get Miles N. (Jack) Pike, the United States attorney, to fire me as an assistant U.S. attorney, but Mr. Pike wouldn't do it. One occasion, when I was in Washington, I went in to see Senator McCarran to find out what the problem was. He said, "Oh, there isn't anything wrong; you've just been there too long." This was the truth, because I would have been better off financially in private practice.

Did you become involved in the State Bar of Nevada?

We had a system then. I don't know what it is now. I don't remember how many members there were on the board of governors; I think it was nine. I was nominated to the board of governors and elected, and the system at that time was that the senior member on the board of governors became president of the state bar with exceptions. I remember one exception during the early years, I think in the late 1930s or early 1940s. An attorney from Eureka, Nevada, who had been on the board of governors for several years, was scheduled to be president. The other members of the board didn't think he would be an acceptable president for the state bar and passed over him. That was an unusual case. You had to continue to be reelected.

Every two years? The current board of governor term on the Nevada Bar Board of Governors is two years. Is that what it was?

I think you had to be reelected every year. After I had been on it for about four years, the next year I was not reelected, so I missed a year in there. Then I ran again and I was elected again and served out the nine years, and eventually became president of the state bar. We had our convention in Winnemucca, Nevada. I arranged a program for Winnemucca, and among other things, persuaded Richard H. Chambers, who had recently been appointed judge of the Court of Appeals for the Ninth Circuit, and who had been recommended to me to come to Winnemucca, for a luncheon speech. He was a great railroad buff, so he and his wife, Mary, took the train from San Francisco to Winnemucca. He was a very effective, humorous speaker.

What year was that?

I think it was 1952. That's where I first met Judge Chambers, and we later became very good friends.

Did you have to serve a full nine years after you were reelected, or did they allow you to count the four?

My seniority stayed. I got the benefit of my earlier service.

Do you remember any cases that you prosecuted while you were an assistant U.S. attorney that are noteworthy?

I remember one. We had a twenty-two count indictment against a man named Martin Marion, who was a principal in a ring to steal late model Chrysler vehicles, take them to a garage, burn off the motor number and remove the serial number plate, substitute a new serial number and a new motor number, then bring the car to Nevada and register it with the Department of Motor Vehicles as a new automobile with a Nevada title, and sell it. We had twenty-two counts of that indictment, each a separate vehicle. The FBI agent who was the leading investigator was a man named Ford Holmes. He memorized not only the original motor number and the original serial number, but the substitute motor number and the substitute serial number for each of those vehicles, and without reference to a note, he could testify with regard to the identification of each automobile and substitute identification, where it was stolen, where it was sold. I thought it was quite an amazing feat of memory. That case was successfully prosecuted.

The trial against Elmer "Bones" Remmer was an interesting income tax evasion trial. At that time, income tax evasion cases were prosecuted by a branch of the Internal Revenue Service, which had their own attorneys, rather than by the Department of Justice. A man named Walter Campbell, who was an excellent trial lawyer, was assigned to this particular case. The defense came in for a continuance of the trial date, and we opposed it very vigorously. Judge Foley refused to grant a continuance. Mr. Pike and I were notified the day before the trial that Mr. Campbell couldn't be found. It seemed unlikely that we could successfully make a motion for a continuance after having opposed the defendant's motion, so Mr. Pike and I went to work. He talked to one of the agents and got an opening statement prepared, and I talked to another one and got some witnesses lined up, learning what they were supposed to testify to, and we started with the trial. Mr. Campbell showed up two

or three days after the trial commenced and took over, which is a good thing because I don't know if we had really learned enough about the case to handle it.

He went ahead and tried most of it, but there were two occasions during the course of the trial when he didn't appear for court, and we had to take over. In the middle of the trial, one of the jurors informed Judge Foley that an overture had been made to him indicating that it would be very worth his while if he would not find the defendant guilty of any of these charges. Judge Foley informed our office of the situation, and instead of notifying the defense attorneys, we notified the FBI and started an investigation of this possible jury tampering charge.

Mr. Remmer was convicted, and the conviction was affirmed by the Court of Appeals for the Ninth Circuit. He went to the Supreme Court, and the Supreme Court reversed because of the impropriety of having a juror subjected to our tampering investigation while the trial was progressing, and without notifying the defense.

One of my most interesting prosecutions was right near the end of my term as assistant U.S. attorney, which involved a burglary of the home of Lavere Redfield. The safecrackers had been brought here from Minnesota—the name of one of them was Young; I can't remember the other—at the behest of a Frenchwoman, a woman named Jean Michaud, who had befriended Lavere Redfield. They broke into Redfield's house, opened the refrigerator, took out a ham and threw that to the watchdog who was supposed to be guarding the premise, and kept him happy. They couldn't open the safe, so they managed to take the whole safe out of the house, get it into a vehicle, and take it out south of Reno, where they eventually got it open. It had a considerable amount of money in it. Jewelry, some of it Redfield's, and some that had been pawned with Redfield as security for a loan, and his private papers were in there.

I can't remember how the FBI got on the trail of Jean Michaud, but they arrested her in the train crossing New Mexico and brought her back to trial, together with the two safecrackers who had been brought here from the Midwest. When they arrested Jean Michaud, they found in her possession some of Redfield's private papers, including a sealed envelope that said, "To my chief beneficiary—do not open until my death," or something like that. The FBI naturally opened it, and it had a note in it that said something about if you dig in a certain place in the wall in the basement, you will gain access to a vault that contains untold treasure. They promptly thought that it would be gold coins held in violation of—what was it called—the Gold Reserve Act of 1934? Something like that. So I got out a search warrant, and they went up to Redfield's house and followed the instructions and opened up this vault, which was a concrete enclosed room that contained bags containing 350,000 silver dollars.

I assume they left the money with Mr. Redfield?

Yes.

Your experience with the Remmer case leads me to ask what you views are about sequestering juries?

I think that except in an unusual case, an exceptional case, where you have some strong indication that there probably would be an effort at jury tampering, that the common course should be not to sequester jurors either during the trial or after the case has been submitted to them. I think that normally there won't be any effort to improperly

influence a juror, and that jury service is quite burdensome to a good many people. It's not appropriate to make it even more burdensome by locking them up during trial.

Do you believe that most jurors conscientiously try to obey the standard instruction to avoid media accounts of the trial?

Yes. As a matter of fact, I think that the media people—well, I can't talk about television particularly but the newspapers—delude themselves when they think that people read their papers very carefully. I found that out in questioning jurors regarding their qualifications. There are very few of them that will respond that they have read anything or heard anything about the case, and I think they are honest about it. If you find out that some answer in the affirmative that they have read about the case—you have to do this out of the presence of the other prospective jurors—but if you ask them what they remember of what they read, you will find that very seldom do they remember anything that's prejudicial to any of the defendants. They just remember the fact that somebody was charged, and you tell jurors that anyway. I remember that when you were assistant U.S. attorney, or perhaps after your service, you told me that in one year we had thirty-five criminal jury trials. Do you remember that?

That number is probably right. I am not sure that was in one year. I once tracked it in the four years I was in the U.S. attorney's office here in Reno. We had seventy-nine felony jury trials over four years. But that's back when the Dyer Act was in full force, and a lot of them were simple interstate stolen cars. We did have a number of other kinds of cases, and I remember learning an awful lot about how to try a case in your court.

3

Life on the Bench

How did you become U.S. district judge?

John R. Ross died of a heart attack in Portland, Oregon, when he was holding court up there in April of 1963. I don't know how I let anybody know I was interested. I remember one occasion when we were over in the Washoe County courthouse, and somebody said, "Is there anybody interested in that job?" I said, "I am." Robert McDonald was a local lawyer. He called me up one day and said, "If you're interested in that U.S. judge's job, Senator Bible is over in the Mapes Hotel, and you ought to go over and talk to him." I called Senator Bible and made an appointment to see him, and he said, "Now I've got this problem of appointing a new U.S. judge. The longer I wait, the more enemies I am going to make. I just want to do it in a hurry and I want to know if you're interested," and I said, "Yes, I am." Then I found out that Senator Cannon was down in Las Vegas, so I flew to Las Vegas and made an appointment to see him. I told him that Senator Bible had indicated he was willing to recommend me, and I just wanted to find out that Senator Cannon wouldn't take the position that I was personally obnoxious to him. He said he would approve the appointment, so they made the recommendation to the Department of Justice.

I think they have a more tedious procedure now than they did then. I didn't go back to Washington to interview the attorney general, and I did go to Washington for a confirmation hearing before the subcommittee of the Senate Judiciary Committee. Only two members of the subcommittee showed up. That was Senator Roland Johnson and Senator Roman Hruska; Senator Bible and Senator Cannon were there and proposed my appointment. They asked me a few general questions, and that was it.

Had you been reviewed, or your nomination reviewed, by the ABA committee on the judiciary?

Yes.

Do you recall what their recommendation was?

Left to right: Judge Bruce R. Thompson, U. S. District Judge, District of Nevada; U. S. Senator Alan Bible; U. S. Senator Howard Cannon, 1963.

Well, the local representative of the committee, Eugene Bennett, was a member of the prestigious San Francisco law firm Pillsbury, Madison & Sutro. He interviewed me, and I had to compile a lot of information about myself for the attorney general and for the American Bar Association. Mr. Bennett told me that he had proposed to the ABA committee that I should be classified as excellently well qualified, but that the committee didn't see it that way, and they just classified me as well qualified. As a matter of fact, at that time I didn't know what the difference was, and I don't think they have that distinction any more.

What had your prior involvement been with Senator Bible?

We had been good friends for years. On one occasion, I drove with him to Elko. I don't remember why we were going to Elko, but it was an electioneering time of year, and we campaigned together in various whistle stops across Nevada on our way to Elko.

You told me in the first part of this interview that you had commenced in the late 1940s to attend Democratic Party precinct meetings.

Yes.

But it was my impression then that you weren't really active politically. Did that change? Attending the meetings is certainly being politically active, but they only happen infrequently.

Well, there was an effort made in the early 1950s to revitalize the Democratic Party. Charlie Springer, who is a present justice of the Nevada Supreme Court, was, I think, the leader in that, and I was helping him in every way I could. I was a good friend of Grant Sawyer and campaigned for him locally when he ran for governor of Nevada the first time. When he was governor, he telephoned me and asked me to be chairman of Senator Kennedy's committee when Senator Kennedy was running for president. I can't remember whether it was Volunteers for Kennedy or something like that.

Anyway, it was an effort to get bipartisan support for his campaign, and I raised some money and organized a committee. We had an office in an old building downtown, and put out campaign literature and arranged for a meeting when Ted Kennedy came out on behalf of his brother's candidacy and visited here in Reno. We had a rally at Idlewild Park, and I think that probably didn't hurt me any when the opportunity to be appointed a federal judge came up.

How long after Judge Ross had his heart attack did you meet with Senator Bible? I think what I'm interested in knowing is how anxious he really was to fill the position.

I think it was within a month.

When you ascended the bench, the court still was sitting in Carson City, wasn't it?

That's right. That was another problem with not paying defense attorneys, because they had to take the time to drive to Carson City, and most of the lawyers were here in Reno. That was a thirty-mile trip. It took a substantial part of the day just to go over and participate in an arraignment or sentencing proceeding.

Where was the courtroom in Carson?

The courtroom was in the United States Post Office building, which was built in 1898; a red brick building with a clock tower on the main street of Carson City which is now being used as a state library. There are no federal courtroom facilities in Carson City any longer. This building in Reno was actually under construction at the time Judge Ross died. When I was back for my confirmation hearing, I met the people in the Justice Department I guess it would be. It had something to do with the planning of the court facilities in this building. They showed me the plans and space utilization studies that they had sent to Judge Ross before the construction of the building was commenced. Judge Ross took a red pencil and wrote across the from of it, "There is no need for any court facilities in Reno." He just shipped the whole thing back. There isn't anybody in the court services group who had any input with respect to this building. When I was appointed, the building was half-way completed, but the construction was held up because the original contractor had become entranced with the prospects of making a million dollars gambling in Reno and had lost his progress payments on the building. The bonding company had to take over. So, we did get an opportunity to make some minor changes with respect to the plans for the court facilities, but nothing major because all of the basic construction had been completed—the walls, and so forth.

When did you move into your first chambers here in the building in Reno?

We moved into this building in the late summer of 1964. You asked about Carson City. The only courtroom when I was appointed

was in Carson City, and all trials were held over there. But in the post office building in Reno, there were chambers for the federal judge and a small bankruptcy-type hearing room, so I used to have arraignments and sentences, for the most part, in that hearing room in the Reno post office building, and drove to Carson City only for trials.

The post office in question is the old original post office on Virginia Street, next to the river?

Yes.

Tell me what you remember most about your early years on the federal bench.

I think that my principal memories relate to my services in other districts. The calendar in the District of Nevada at that time was in such a condition that we were one of the districts that serviced and helped out in other districts rather than the reverse. Now the reverse is true. The calendars of all the judges in Nevada are so heavy that if help is to be given, it has to be given to us rather than the other way. I sat several times in San Francisco for three to six weeks at a time. We enjoyed that. It was nice down there.

Were you sitting on the district court there?

Yes.

You mentioned that Judge Chambers, who by then I believe was chief judge of the Ninth Circuit, had a philosophy about new district judges.

Yes, he would say, "We want you to make your first mistakes away from home." So very shortly after your appointment, he would assign you to service in another district. He sent me to Phoenix, Arizona. Then, for the first ten years of my tenure as a District Judge, I held court in every district in the Ninth Circuit except Montana.

How about traveling to Las Vegas? Did you do that?

Yes, I think I averaged about two months a year in Las Vegas. As a matter of fact, you tried cases before me in Las Vegas.

That's right.

Their calendar was heavier than the Reno calendar. In order to try to balance the caseload in the district, I would take cases down there. I remember one case involved a school segregation problem in Las Vegas, and Judge Foley disqualified himself in that case on the motion of plaintiff's attorney, Charles Keller, who claimed that he was too close to the power structure in southern Nevada. That was his ground. Judge Foley disqualified himself and assigned it to me. It was an action against the Clark County School Board, and a member of the school board was Donald Brown, who had been my roommate for one year at Stanford Law School. In our first court session in the case, I notified Mr. Keller that one of the defendants, Donald Brown, had been my roommate in law school, and perhaps I was too close to the power structure in southern Nevada. He said, "Oh, no, you'll be all right," so we stayed with it.

At that time there were just two active federal judges in Nevada?

Yes.

Was Roger T. Foley still alive then?

Yes.

Did he sit as a senior judge?

Not at that time. I don't know when he terminated his active service. He still had a secretary named Martadel Cooper. He didn't have a law clerk. He had two cases that I knew of assigned to him. One was a case involving the water rights on the Carson River called *United States v. Alpine Land and Livestock Company**, and the other was a case involving the Pioche Consolidated Mines, which was a long-lasting case. I was disqualified in it because I had been an attorney for one of the parties. Immediately after his retirement, which I think was in 1955, he did do considerable work as a senior judge in other districts, but I can't remember when he tapered off. He didn't try any cases in Las Vegas that I know about.

You ended up with the Alpine case, didn't you?

Yes.

Is that still pending?

Oh, we're still having problems with it, but that's one of the accomplishments that I'm proudest of as a federal judge.

That case was started in 1926. A lawyer named Douglas King came out from the Department of Justice after Judge Foley died—I don't remember when that was—and the case was assigned back to me, and suggested that we had better get the show on the road. We worked out a method of serving new process on all of the new people who would be involved as successors to the original defendants and intervenors. The case, I think, was tried in 1979. I don't know the exact date. With the assistance of a couple of very good law clerks, we got the case decided, and it was affirmed on appeal by the Ninth Circuit Court of Appeals; but it spawned a lot of subsequent problems because the original temporary restraining order which the parties had been riding along on for twenty-five years or so didn't deal with the water rights in the Newlands project.

The situation down there was in pretty bad shape because there were lands under irrigation down there to which there was no assigned water right, although there should have been. There was no method for a farmer to come in and say, "I want to transfer the water right from this land to irrigate this other land."

In the meantime, the secretary had become very active. The Paiute tribe at Pyramid Lake had brought an action against the secretary of the interior back in Washington D.C., claiming primarily that water that should be going into Pyramid Lake was being diverted over to the Lahontan project out of the Truckee River. The farmers recognized that they had to get their house in order with respect to their entitlements down there, and they brought an action to transfer the place of use, and in some instances the points of diversion, of water that were being used in the Newlands project.

The state engineer had some very lengthy hearings on those complications. He did an excellent job, and granted most of the transfer applications. I approved his action under the terms of the *Alpine* decree, and that case is now, I think, sort of in suspense status. The court of appeals is waiting for determination, which has recently been made of the bench and bottom land controversy

*U.S. v. Alpine Land & Reservoir Co., 965 F.2d 731 (1992).

which involves the designation of which lands in the Newlands project were entitled to a water duty of 4.5 acre feet per acre for bench lands, or the water duty of 3.5 acre feet per acre for bottom lands. That has just been decided, and I imagine that will be up before the court of appeals.

Then every year since 1969, the secretary of the interior has been issuing operating criteria for the Newlands project which he uses as a method of determining the amount of water that is entitled to be diverted from the Truckee River through to the Truckee Canal, over to Lake Lahontan for the use of the Newlands project farmers. There has been litigation about those operating criteria, and the present stage of that is that about April thirtieth of this year, the secretary has stated that he is going to promulgate some so-called permanent OCAP. He's been doing it on an annual basis, but he wants to promulgate permanent OCAP, or operating criteria and procedures, for the Newlands project, and I am sure there are going to be lots of objections to those.

Is that part of the Alpine litigation?

Yes. In the meantime, some years ago the secretary threatened to terminate the contract of the Truckee-Carson Irrigation District that had been managing the Newlands project since 1928. They brought an action—well, I guess the TCID brought an action—to enjoin the secretary from terminating that contract, claiming that they had made substantial breaches of the contract. We tried that case, and I held that they had, that their contract was terminated. That was sustained by the court of appeals, so the TCID now is operating the project on a year-to-year basis contract with the secretary. I don't know if they'll ever get everything settled down there.

What other cases that you handled as a United States district judge are memorable? You said that you were proudest, or one of the cases you were most proud of, was that Alpine case, and getting it finished. What other?

Well, I think some of the most interesting cases were the cases that arose out of the robbery of the First National Bank. I can't remember exactly when that occurred, but I can look it up.

Three men named Malone, Michaelson, and Foresburg robbed the bank of over $2,000,000. At that time it was the biggest bank robbery reputedly in the country. It was a wonderfully planned bank robbery right up to the point. I don't think they expected to be successful, because after they got out of the bank with all that money, they had it all set up to leave and divide the loot among the three of them, but they were all wanted people. Michaelson was an escapee from McNeil Island Penitentiary, and Foresburg was wanted for a couple of bank robberies up in Oregon. I'm not sure about Malone, but, in any event, indictments were returned against these three men. They were all three arrested.

We had the Speedy Trial Act to contend with at that time. For some reason or other, Michaelson wasn't' available for trial. He was still being held down in Los Angeles. At the time, under the Speedy Trial Act, we had to try Malone and Foresburg. The government wanted some more time, but according to my interpretation of the Speedy Trial Act, I couldn't give it to them, so we had the case set for trial. Foresburg escaped from the Washoe County Jail with the assistance of a lawyer from Los Angeles and a man named Timmons, so he granted his own continuance. We went ahead and tried Malone, and they really didn't have enough evidence to tie Malone into the bank robbery, at least to

overcome the presumption of innocence.

He was found not guilty, but his parole from McNeil Island was revoked, and he was back in prison anyway. Malone was kind of a father to this young Curtis Ray Michaelson, and Michaelson wouldn't talk so long as Malone was in jeopardy, but Michaelson actually hated Floyd Clayton Foresburg, the other co-defendant, and the case against Michaelson was unbeatable. They got a search warrant and went into his house and found $750,000, or something like that, stuffed into the air conditioning ducts in his house, and they had him identified as the one who had purchased a couple of new automobiles. He told the whole story to the U.S. attorney, and by the time they recaptured Foresburg, Michaelson testified against him. He pleaded guilty.

Then we had an indictment against this Santa Monica lawyer. I can't think of his name. He's an ex-football player from the University of Nevada. He had been with the Santa Monica Police Department, and went to night law courses, or something, and got a license to practice law in California. He was on the side of the defendant. He made the plan for Foresburg to escape from the Washoe County Jail, and he got this Clark Timmons to come up here. He came up here and rented a room at the Riverside Hotel, and took a stepladder. His room was level with the roof of the Washoe County Jail. He walked over on this ladder that was placed between the roof of the Washoe County Jail and the window of his room in the middle of the night with a wrench, and unbolted the cover for the air conditioning and took it off. Foresburg was a great big man; I don't understand how he could do it. He crawled through the air conditioning ducts up under and escaped, so the U.S. attorney prosecuted Timmons and this lawyer for the escape successfully, and they prosecuted on or two people for perjury before the grand jury.

We had several trials out of that robbery that were very interesting. I tried the first Joseph Alioto against *Look Magazine* trial down in San Francisco, which was a libel action and ended up in a hung jury. It was tried four times: two subsequent jury trials, which were hung juries, and finally a court trial, which resulted in a small verdict. That was an interesting trial, and highly publicized.

Did you try all four of them?

No, I only tried the first one. Judge Russell Smith from Missoula, Montana, tried it once. I think the final court trial was before Judge William Orrick. Another interesting case I had was an income tax evasion trial against John Alessio and his brother down in San Diego, California. This John Alessio had been a very prominent citizen, and probably as crooked a man as I ever listened to. He owned a racetrack at Agua Caliente, and we were right in the middle of trial, having lots of fun. His ex-accountant took the stand as a witness. He and his lawyers listened to about half of that testimony and decided to plead guilty. They came in with their guilty pleas, and I set a date for a presentence report and sentencing. I flew to San Diego the night before I was supposed to sentence Alessio.

With the presentence report, there was a stack of letters two feet high asking for mercy, for John Alessio particularly. As I recall, there were five Catholic priests, six superior court judges, two or three municipal court judges, the former governor of California, the lieutenant governor of Arizona, and just reams and reams of letters from prominent citizens of San Diego, telling me what a great man John Alessio was, and all of the good works he performed and charitable

contributions he made, and so forth. I read every one of them, but when I got in court for sentencing, after I sentenced Mr. Alessio and his brother, I said, "I have all these letters of recommendation, and they are not any good to me. I think maybe Mr. Alessio would like to have them for his memoirs," and gave them to him.

What sentence did you impose?

I sentenced him to three-and-a-half-years in the penitentiary. His brother, who was less involved, got one year. He was assigned by the bureau of prisons to Lompoc Correctional Institution, and he promptly corrupted everybody in there. He bribed the guards to let him bring prostitutes into the institution, and to let him out on leave for a day or so at times, all kinds of special privileges. I think they had some kind of a case down in San Diego about that.

Since you have been on the bench, have you ever missed private practice?

All I ever missed, I guess, was the income. At the time I was appointed, I was exceptionally busy. I had a pretty good practice, and it was kind of wearing on me. The ringing of the telephone and all that stuff just drives you up the wall after a while. I don't think there's any convenient way to postpone telephone calls when a client calls you about something. I know lawyers who do that. In any event, in 1963, when I was appointed, I was fifty-two years old, and I was really ready for a change. I've enjoyed it ever since I did it.

Aside from income, one of the things that sometimes is commented on is the necessity, real or perceived, for a judge to limit social contacts because of the nature of the job and the different approach to cases. Did you find that that was any kind of burden, shifting from being an active, private practitioner to being a judge, where you didn't see people in the same context, with the same frequency?

Oh, I think so. You do become quite isolated.

Judge, how do you select a law clerk?

From the provincial point of view, I've never made an effort to obtain the man who had the top record in his class. I usually do require a good record of accomplishment in law school and reasonably good recommendations, but I have always given preference to an applicant who was from a Nevada family, or who had close connections to Nevada, and wanted to practice in Nevada.

How do you use your law clerks? What do you let them do, or make them do? And has that changed over time?

Yes, considerably. Initially I had one law clerk; and then I had the old-fashioned type of bailiff who would help with logistical problems of the judge who moved quite frequently from one court to another, and then handled the problems of decorum in the courtroom and supervision of the jurors. Finally, about 1970, I persuaded my bailiff to retire because I needed more help. From that time forward, I have had two law clerks serving staggered two-year terms, one of whom was a crier law clerk, and the other who was the senior law clerk. At one time, when the post-conviction remedy and the prisoner complaint types of cases became quite heavy in northern Nevada, unofficial division of the

District of Nevada, I had to use my law clerk primarily for those petitions.

At one time, when I had two law clerks, I had one of them assigned primarily to the United States magistrate for his use because I had referred to him the prisoner petition cases. Ultimately, I think along about 1975 or 1976, or perhaps it wasn't until I became a senior judge and Chief Judge Edward Reed was appointed, then we would not devote so much of a law clerk's time to prisoner petitions and *forma pauperis* cases. For the past ten years or so, my law clerks have been working on the cases assigned to them because when I became senior, I refused to take any more *forma pauperis* or prisoner complaints.

You also do not handle criminal cases now, do you?

I have had one criminal case since 1978, and that was simply the reception of a plea and the imposition of sentence, except for a time when I got an assignment to the District of Hawaii. A judge from Virginia was assigned here to handle a case that was supposed to take six weeks, so I vacated my chambers and courtroom for his use. Judge Browning was kind enough to assign me to Hawaii. I handled criminal cases in Hawaii as I had on my previous assignments, but I didn't find it very easy to do because I hadn't kept current with the changes in criminal law and procedure. With respect to my management of law clerks, generally all I have done is give them a case, whether its a pending discovery motion, or a motion to dismiss or a motion for summary judgment, or whatever it might be, and have them read the briefs and submit a memorandum.

Do you then discuss it with the clerks?

Sometimes I do and sometimes I don't. I guess most often I discuss it with them somewhat, but mostly in cases where I drastically disagreed with their solution. You are one of my early law clerks, and I don't remember how we worked then.

Pretty much as you described with the assignment of a case or a matter that was under submission, or that you anticipated being under submission. One thing I remember you asked me to do was be in the courtroom during trials and to take notes.

Yes, I still do that.

My memory is that you always took better notes than I ever could. Do you still take your own notes from the bench?

I always take notes. I have gotten so my notes are not as meticulous as they used to be. What year were you here, about 1965?

Sixty-five to sixty-six.

In those days, I tried to have a pretty accurate summary of most of the witnesses' testimony, but nowadays I listen very carefully to all of the plaintiff's case so I will be prepared to rule on an anticipated motion for involuntary dismissal. When we get to the defendant's case, my notes become much more sketchy.

Are these jury trials you're talking about?

Both jury and court.

Do you normally not rule from the bench in a court trial?

I don't know that "normal" is the right word. It depends on how the case turns out. I

think more often than not, the lawyers bring up some problem at the conclusion of the case that hasn't been thoroughly examined in pretrial memoranda, or in earlier motions for summary judgment and the like. I have to take the case under submission to consider the viability of this new issue that has come up, or new legal argument. I prefer to have cases where I can rule from the bench. From the point of view of review by the court of appeals, I haven't found that it makes much difference whether I rule from the bench or write a more elaborate, thoughtful opinion.

What sort of pretrial preparation do you do before you start a trial?

I usually read the pretrial order and mark it in the file so I can find it easily. The pretrial order, except in very unusual cases, requires each of the parties to file a pretrial memorandum or brief, proposed findings, and conclusions, and I read those before the trial. Fairly often, one or both of the parties will come in with fairly elaborate motions *in limine*, trying to restrict the scope of an attorney's opening remarks to the jury after the jury is selected, or to restrict the evidence that is to be received during the course of the trial. I read those, and I almost routinely, in a situation where there may be a question about the admissibility of evidence, just tell the attorney that he can't talk about that in his opening statement. With respect to efforts to get me to rule against the admissibility of evidence prior to hearing any of the evidence, or prior to the commencement of the taking of evidence itself, I just tell them I won't do it. I'll wait until I hear what is going on and I get a better idea of whether the evidence is relevant, non-prejudicial, and so forth.

Do you think motions in limine have a proper place in trial practice, or are they simply a burden?

I think they have a very proper place in the education of the judge as to what he should anticipate may happen during the trial. I think it's a great help to a trial judge to have advance notice of a problem that may arise, but as far as bringing about a final solution of an evidentiary problem before the trial commences, I don't think they are useful.

For a long time, there seems to have been, in many state courts and in the federal courts, a bias, if you will, at least at the appellate level, against the granting of summary judgment motions. There were three Supreme Court cases recently decided that they may have reinstated the summary judgment motion as one, which might be made. What is your view of summary judgment motions? Even if they are not likely to be granted, do they also serve a valid, proper purpose in educating the judge about the case?

Very much so. I think if you have some fairly decent and respectable lawyers in the case—by respectable I'm not talking about their morals; I mean professionally respectable—it is a great assistance to the judge, and in many respects it doesn't amount to a duplication of work. I have on several occasions limited the requirement to present trial briefs because so much of the area has been covered thoroughly in the earlier presentations. I like the summary judgment procedure so long as there has been a full opportunity for discovery, and you're quite thoroughly assured that each party has had a good opportunity to put his best foot forward and make the strongest case he can. I think too often, motions for summary judgment,

sometimes entitled a motion to dismiss, but supported by evidence outside the pleadings, are made way too early in the case.

I can understand why that might, because discovery has become a very expensive procedure for parties. The lawyers may well know that something is absolutely unprovable, or that there is an essential element of the plaintiff's case that cannot be established anyway, so they want to eliminate this expensive discovery process that is burdening the litigants and the courts throughout the country. However, those recent decisions of the Supreme Court that you alluded to emphasize the need for adequate discovery before a motion for summary judgment can be granted with any reasonable assurance that it will be sustained. Trials are expensive; they usurp the time of the jurors, and the court officials, and judges. In many ways, a trial is not very efficient, but any trial with live witnesses is much to be preferred to a paper trial on affidavits, and unless the documentary evidence supported by testimony or affidavits is practically conclusive on an essential element of the case, it is better to go to trial.

How are trials inefficient? How could they be made better?

I am always reminded of the lawyer who interrupted the judge and said, "Well, I don't mind your trying my case, Your Honor, but for God's sake, don't lose it." I think that trials are inefficient mostly because lawyers will not stick to the issues; they are very, very, repetitive. They will get a wonderful answer from a witness from their point of view, and then foul it up by trying to gild the lily with a follow-up question that gets the witness to hedging on his original answer. I think that trials could be made more efficient if more judges were willing to participate in the reception of evidence, in examination of witnesses, and interrupt an attorney when he does become redundant and repetitious. I know that's a necessary thing that trial lawyers generally like very much, but hours of time can be saved, particularly in examination, if a judge will interject himself into the proceedings. I think quite generally, at least in the federal courts, where possible disputes over the foundation for documentary evidence are resolved pretrial by agreement among the lawyers because of the common practice of judges insisting on it, that has made trials a great deal more efficient.

You still have the problem of what use you are going to permit counsel to make of the documents that they stipulated into evidence during their examination of the witnesses about the documents, and whether they are going to be permitted to read long agreements and transcripts and so forth to the jury, or just refer to them and perhaps make their fuller presentation during their opportunity to argue. You have to handle those problems on an *ad hoc* basis as they come up, because each trial is different. I am satisfied that a judge should never get himself into the trap of permitting counsel to read every document in full to the jury after it has been admitted into evidence because that really does encumber the trial, puts everybody to sleep, and unduly lengthens the proceedings. There are probably other things, but I can't think of them.

From your perspective on the bench, what are the qualities of a good judge?

You have to be firm and fair, I think. Of course, the judge's personal perception of what's fair, and the litigant or his attorney's perception of what's fair may be diametrically

different, but I think a judge should try to be patient but still be in charge of the case and the trial; not the case itself, but in charge of the trial. He should be very careful to be assured in his own mind that each party has had a fair opportunity to present his side of the case, and sufficient of the evidence at his disposal to give him a better opportunity with respect to a decision by the trier-of-fact. The judge should try to become as knowledgeable about the law in that particular case as he is able in the time available to him, and in jury cases, give a neutral charge to the jury covering the contentions of both parties.

Many times, judges will want to ask questions of witnesses that the judge has in his own mind. I know that you have done that; I have seen you do it. Do you draw any distinction between asking questions in a jury trial as opposed to a court trial?

I tread a little more carefully in a jury trial for fear that I may ask a question which will bring a response which would include prejudicial elements, but with that exception, I am a strong believer in the instruction that we give to the jury that occasionally I ask questions of a witness for purposes of bringing out information for the benefit of the jury which I don't believe has been covered in the evidence; and the jurors should not infer anything from my question or the answer if the witness with respect to any disposition I have with respect to the final outcome of the case. I have observed, not knowing what witnesses have been lined up on each side, and what the subject matter of their testimony will be, that on occasion I had been questioning one witness and anticipated the subject matter of another witness's testimony, which is not very helpful.

The reason it's not very helpful is that when a judge asks a question of a witness, the witness is apt to think that he had better answer. He is not apt to take the point of view, well I don't know or I don't remember, or something like that, especially when you are talking to expert witnesses. They uniformly have the opinion that they have to know everything and answer every question. The average trial brief doesn't give a judge enough of a preview of the anticipated testimony of the various witnesses. I recall a witness who I had let leave the stand and had excused from the trial without asking him a question that I thought should have been asked, and it was never covered by any subsequent witness, so it's pretty hard to guess right.

I'd like to go back to the question of discovery for a moment. Do you handle, directly and through your law clerks, your own discovery motions?

Yes. The reason for that is that I think the magistrate who handles all of Judge Reed's discovery motions has an overload.

Were it not for the overload, would you be willing to give the magistrate, or any magistrate, responsibility for discovery motions?

I don't think that's the best use of a magistrate. I don't think it saves much time. I think it's a saving of a judge's time only if the magistrate makes a ruling, and no objections are filed, but if objections are filed, the judge and his law clerks have to go over the same ground that the magistrate covered. I think that a better method, rather than just having a blanket order that all discovery problems will be referred to the magistrate, is that the first reference of the file ought to be to the judge. He should do the screening of which

motions should be referred to the magistrate or his own law clerks, and which ones he should just write order on; because he has had the problem so many times, he can do it in one-tenth the time that somebody else is going to spend on it.

What is your view about the imposition of sanctions for not complying in good faith with discovery?

My present opinion is that everybody has become sanction happy since the modified Rule 11 of the Rules of Civil Procedure. It is just routine for every discovery motion to include a motion for sanctions, particularly attorney's fees and costs. I think the bar generally is overworking the possibility of sanctions, but if you have a case where there has been an adamant bad faith refusal to engage cooperatively in discovery, then the intent of the Rules of Civil Procedure is that substantial sanctions are justified. Whether they should go beyond an effort to reimburse the opposing party for the time his attorney had to put in on compelling discovery, I am not sure.

From your perspective on the bench, what are the qualities of a good lawyer?

The basic qualities of a good lawyer are knowledge of the law, and preparation. Those are the two most important things. I don't know that he has to have a memory or intellectual resource like Dean Pound, who reputedly remembered everything he read, and recited verbatim, but he has to know enough law to recognize the real issues in the case, and to know where to go to find the answer. He has to be willing to spend the time on the case to assemble the basic facts that are going to determine the course of the lawsuit, and to analyze them with respect to the law. A sound knowledge of the English language and written and oral communication are important. I am not persuaded that oratorical ability is very important any more. Any good lawyer has to have a basic understanding of the ethics of the profession, and a willingness to comply with them. I think that is generally true of the bar here in northern Nevada. I think most of them are very good.

Do you find a noticeable difference in the quality of the attorneys, who appear before you here, as opposed to other places that you have sat on assignment?

I don't think so. I think that the lawyers who practice in the federal court generally throughout the Ninth Circuit are high quality lawyers.

You occasionally sit on assignment at the circuit court level. How do you prepare for those assignments?

The preparation is directed by the chief judge on the panel. That is the assignment of what is to be done. Some of the presiding judges on a particular panel don't provide for a bench memorandum by members of the panel with respect to the cases that are going to come before them, but most of the presiding judges in the Ninth Circuit do assign a case or two to each member of the panel for a bench memorandum. Then I, and in my observation, all of us, assign those cases to our law clerks and have them prepare a memorandum, the format of which has become pretty much standardized. Then we circulate the bench memos to the other judges, usually without adopting them

as our own. Then, as I have been doing this afternoon, we read the briefs and the records, make notes, and look up cases and compare them to what the bench memo has to say about it, and make notes of what other problems we think may be involved in the case, sometimes formulating specific questions to address to counsel during oral argument. That's just about it.

What are your thoughts about the establishment of a system that would allow the attorneys who were to argue a case before an appellate court to have access either to the bench memorandum, or to something, which focuses the lawyer's attention on the problems that the court perceives?

I've indicated that the bench memorandum are not necessarily the expressions of the opinion or even of the judge whose clerk wrote the memorandum, so I would be violently opposed to the attorneys having access to those. I think it might be very helpful if the attorneys could have an advance notice of what was worrying the court about any particular case that was coming up for argument, but I can't think of any practical way to accomplish this in view of the time limitations that are available. All the judges are so busy, and they have so many cases to consider, that it would essentially mean a pre-argument meeting of the judges it seems to me, and then an agreement on what we would like to have the attorneys talk about.

Well, then, is interruption of the workload of the judges justified to have oral argument? Is oral argument really worth it?

I have always thought it was. Of course, I am not an appellate judge, but I think most of the appellate judges would not like to do away with oral argument in the important cases. Now, in the Ninth Circuit, they screen out a lot of cases and do not have oral argument in those cases where—there are many, many criminal cases that are appealed just to gain time. There isn't any real meat to some assignment of error because of some opinion that Justice Clark wrote years ago in—what was it, *Anders*?

I think so.

The lawyers feel they have an obligation to make any argument that occurs to them, even if specious, so they do. Those cases are screened out by the staff law clerks, or eliminated from the oral argument calendar, so, in most of the cases that are argued, there are reasons for the argument. I can remember years ago, I had a case before the Nevada Supreme Court that involved the V&T right-of-way through south Reno and Washoe County to Carson City, and the question of whether when the right-of-way was abandoned, it belonged to the state of Nevada, or to the abutting landowners. Shortly before the oral argument, an answer or argument occurred to me with respect to a particular issue in the case, which had not been included in the briefs, so I made the argument orally, and it was adopted by the judge who wrote the opinion.

So, I know there are occasions when oral arguments are useful, and I've seen it in the cases I have sat on in the Ninth Circuit. You get a brief that will be encumbered with twelve or fourteen issues, and when you get down to oral argument, you find the lawyer talking about one thing because he knows that's the only point he's got that is worth discussion. It's helpful in that way also, and then lots of times when you read some of these appellate

records, what occurred is really not as obvious from the record as it is to the lawyers who handled the case all through the trial, and you clarify some of those matters.

When you started as a district judge, I know you kept your own calendar, and I also know that you do not now keep your own calendar. What are the merits and demerits of keeping your own calendar, and having someone else do it, and why did you change?

About the only merit I can see in keeping my own calendar is that usually I was the only one who knew when I planned to take a vacation, or take a few days off to go fishing, or had some other problem not involving court attendance. Also, I thought I could better judge when cases should be stacked two or three on the same date, with the anticipation that by the time we got there, there would be only one for trial. I guess the other reason was that as far as I know, that was always the way it had been handled. My predecessors on the federal bench kept their own calendars. The reason I changed is because under guidelines established by the Administrative Office of the United States Courts, my courtroom deputy could not obtain a higher grade rating classification and increased compensation unless he was given calendar responsibility, so I gave it to him.

Do you find that the stacked calendar system works reasonably well?

I can't imagine it working well if it's handled the way it is in some districts; for example, the way it used to be handled in Las Vegas. I don't know how it's handled now, but as many as thirty cases might be stacked for trial to commence on a certain day, and none of the attorneys would know whether they were going to have to be ready to go to trial or not. It was particularly hard on the U.S. attorney if he had a stacked case that might well come to trial. In criminal cases, witnesses are subpoenaed from every place in the United States. You can get an accumulation of witnesses at the place of trial, ready to go, and no court to hear them. I just can't believe that that's an appropriate way of managing a court system.

Is that management style something that was the desire of the judges at the time in Las Vegas, or was it something the clerk or the administrative office had something to do with?

Did they have it when you were a U.S. assistant?

When I was an assistant, Judge, almost all of my time was here in Reno.

Well, I know, but you tried some cases in Vegas.

They would stack the calendars down there, but not to the extent that you mentioned.

I think that was a management technique of the clerk, with the approval of the judge.

When you came on the bench, there were just you and Judge Foley.

That's right.

With Judge Roger T. Foley as senior judge. He still heard some cases, as I recall.

He didn't hear much in Nevada. As I recall, he had two cases assigned to him in Nevada, the *Pioche Consolidated Mines* case, and the *Alpine Land & Reservoir* Carson Valley water rights case. He did for perhaps

ten years after his retirement serve in other districts to try cases.

Over the years, the district has grown, and you now have Chief Judge Reed here in Reno, Judge McKibben, Judge Pro, Judge George. I think I've left somebody out. Judge Foley still sits as a senior judge.

It seems to me you left someone out too, but I can't think of who it is.

Has the expansion of the court, and the addition of more judges affected in any memorable way your ability as a judge to perform your duties? I am wondering what the impact has been of having more judges, more administrative problems of the court. I assume that with more judges, there is more administration.

That's right, but I don't have any of the administration, except to read the reports that are circulated. It hasn't really affected me particularly.

Judge, if the growth of the court in terms of its own manpower hasn't affected you very much, how has it affected the court as an institution? Have you observed any differences in the way the court used to function, as opposed to the way it functions now?

In the so-called "good old days," each judge had a courtroom and a court reporter assigned to him. That doesn't seem like much of a help, but to have your own court reporter is a genuine assistance, because when I had a court reporter assigned to me, if we had a petition to vacate a sentence on the ground that I hadn't properly advised the defendant at the arraignment interrogation, I could go into the court reporter's office and say, "Will you get out your notes and tell me what happened here?" You could do things so much more easily with fewer people involved than you can do now. That's just one example of ways that the bigger things get, the more complicated they are, and the harder it is to accomplish a result.

Tell me the names of some of the judges that you have had contact with in the circuit, or even outside the circuit, that you most admire, and why.

There was a judge who recently died at the age of eighty-eight up in Boise, Idaho, named Fred Taylor, who had an excellent conception of proper judicial decorum and behavior, and the handling of trials and lawyers. His associate, Ray McNickles, was of the similar type, and also a very friendly, outgoing person. Judge Al Wallenburg in San Francisco, and Tom McBride in Sacramento, Francis Whelan in Los Angeles, and Wally Craig in Arizona were all high quality judges according to my standards, which you asked me about before. I think the judges I admired the most probably include Walter Pope on the court of appeals. He was an exceptionally outstanding man. Richard H. Chambers, the chief judge of the Ninth Circuit, was a unique person. You don't meet a man of his accomplishments very often. Charles Merrill, who came from the Nevada Supreme Court to the Ninth Circuit Court of Appeals, is now a senior judge, and is a person I always liked and admired very much. He is an excellent judge. There are more than that.

As a district court judge, what is your general perception of the Ninth Circuit?

I have never been offended or affronted by any of their decisions in cases, which were appealed from my court that were either reversed or modified. Most of the time, I thought that their decision was probably correct. In some instances, I thought the

misdirection of their appellate review was the result of a misunderstanding of the situation that confronted the trial court. I think they are too inclined to ignore the practicalities of the situations that arise resulting from historical mistakes, which are not easily correctable, and to seek a theoretically sound solution, which does little to solve the problem, presented. I think that attitude among the judges is more a current attitude than it was in the early 1960s when I first became familiar with the court and how it operated.

Do you think the Ninth Circuit is too big?

I think the court is too big; it has too many members. I am not suggesting that numbers are not needed to handle the cases properly, and I think that Chief Judge Browning has done an excellent job of manipulating the situation so that the business is handled; you can even have *en banc* hearings of a sort on a basis where there is a drawing of judges who constitute the *en banc* court. I don't know how important size is. Of course, it is difficult to avoid situations where you have three-judge panels considering the same or similar problems at the same time, and writing conflicting, or inconsistent results or declarations of the legal principles involved, but the type of collegiality they used to have where all members of the court resided in San Francisco and had their offices there is a thing very much of the past, and can never be regained.

The problem with splitting the circuit is becoming less of a problem with the growth of population in the Northwest. Of course, it never seems to grow up there as fast as it does in California, but I don't think the members of Congress from California will ever agree to dividing California, having part of it in one circuit and part of it in another. I don't know what the current statistics are, but they have been that roughly sixty-five percent of the circuit court business comes from the state of California. They are getting more cases up in Washington, Oregon, Montana, and Alaska. The litigation explosion is as evident there as it is anywhere else, and although it wouldn't accomplish any division of the circuit on the basis of equal case load, I think the time will come when Idaho, Montana, Oregon, Washington, and Alaska, and perhaps even Hawaii, are in one circuit, and the other states in another.

Do you think the absence of the collegiality referred to affects the quality of the decisions that are being rendered by the court?

I don't have enough experience with it to comment on that. All I know is those years ago, the opportunity to walk down the hall and go in and talk to one of the other judges about a case was there, and it's not there anymore.

As a district court judge, what is your perception of the U.S. Supreme Court?

I think it is a tremendous institution, which could be improved. One of the great accomplishments of the Warren Court in the 1950s was to publish the opinion in *Brown v. Board of Education* accomplishing legal integration as a unanimous view of the court. It is a goal that they should have in mind much more than they have since. I think it weakens every one of their opinions where there is a five to four split, and leaves people with the appointing power with the impression that if I can just get one more person on my side on that court, the law would be different. That is a bad perception to have of the court, and a bad signal for

the Supreme Court to give to the American people. I think it should be a precept of any justice appointed to the Supreme Court of the United States that the accomplishment of unanimity or substantial unanimity is important. That is, a substantial majority of the court in support of any announcement of the law is more important than insisting upon the articulation of one's individual opinion. If we had more of that sort of attitude from the court, we would have a stronger Court, and one that is less vulnerable to political manipulation.

Over the years, Judge, what has been your relationship with the U.S. attorney's office and the public defender's office? I know you don't do criminal cases anymore, but you did for quite a number of years.

I always had a good relationship with both offices, as far as I know. I have tried my best not to go out of my way to criticize what I thought was incompetent or at least injudicious lawyering in both offices. I think that for a number of years, the selection of the person to serve as the boss, that is, the U.S. attorney, was not good. It was more based on political reasons than the talents and abilities of the person appointed, but frequently that was offset by the appointment of very well qualified deputies who handled most of the cases. So, generally speaking, our relationship was satisfactory

What is the chief problem facing your court? Is there something you can identify as a chief problem?

I think the court system as a whole entire federal judiciary is overwhelmed with bureaucratic assistance which is intended to be helpful, and is more often than not an impediment in performing judicial duties. That situation has naturally impacted on administration of the local courts. We have too many requirements that don't benefit the public, the litigants, or the judges in the performance of judicial duties.

Can you give me some examples?

One thing we have is a requirement of a financial report from the judiciary which is much more elaborate than it needs to be. All the public needs to know about a judge's private financial affairs is the sources of his income. It doesn't make any difference how much, because the disqualification statute says no matter what interests you have, however slight, you are disqualified. If you could just file a simple statement of the sources of your income, nobody has to know the range of income you have from anything, which they require you to report now. If you just report the property interests you own and the sources of income, that ought to be enough for anybody, I think. Now, they have an elaborate committee set up to supervise that. I just got through reading a report from Judge Eugene Wright about how it's handled, and there are judges all over the United States who are on that committee who have to devote time to reviewing these reports and comparing them with the reports of the previous year to see if you left anything out, or if some change occurred that you haven't adequately explained. The whole situation just seems stupid to me.

I haven't had much to do with the administrative office or administrative affairs since 1978, so I'm not qualified to talk very much about it. I know the office itself, the Administrative Office of the United States Courts, has grown out of all proportion to the numbers of judges that we have in the

judiciary compared to twenty-five years ago. The Federal Judicial Center is another innovation of about ten years ago that has taken on the problem of the continuing education of judges. It does a very good job of setting up seminars in different areas of the country where the judges do attend and learn about new legislation, such as RICO for example, and the new sentencing guidelines; things like that. It is important, but everything becomes too elaborate and gets too big. I just don't like it.

To what extent has Congress added to the problem that you identified in terms of bureaucratic impediments to effective judging, and to the caseload of the courts? Do you think Congress, when it enacts legislation ever takes into account the impact it is going to have on the court system?

I think individual congressmen have a perception of the problem, but Congress as a whole does not. I think that someone has made a suggestion, and a good one in my opinion, that every time Congress considers new legislation, they ought to require something similar to an environmental impact statement under the Environmental Policy Act concerning the impact that this legislation is going to have on the court system and the judges before enacting it. Of course, I am not satisfied. That wouldn't really accomplish much because I think Congress would go ahead and do what they want to do anyway. I remember one time when Senator Howard Cannon was delivering an address at the National Judicial College. I think it was the Jackson lecture that year. He was talking about the relationship between Congress and the federal court systems, and his comment was that of course we all knew that the Constitution of the United States provided for three equal branches of government: the executive, the legislative, and the judicial, but also realized which one of them was more equal than the others.

Can you identify something that you would describe as a judicial philosophy?

I am not sure just what you mean by judicial philosophy. I am a strong believer in judicial precedent. I recognize that this is a subordinate trial court in the federal judicial system. I'm bound by my understanding of the purpose and decisions of the Ninth Circuit Court of Appeals, and Supreme Court of the United States, and on more than one occasion I decided cases because of my understanding of those precedents and not on the basis of what I thought the law should be, or how it should control a decision in a particular case. Aside from that, I think I just try to follow the oath that I took when I was sworn in.

What do you think about judicial activism, judicial legislation? Should judges make law?

In the normal course of things, cases have to arise where there isn't any established controlling precedent that I can discern in the Ninth Circuit opinions, or in the opinions of the Supreme Court of the United States. In those areas, I don't think that political considerations have any weight. I am a child of my past. There have been situations, which I am sure I decided the way I decided because of experiences I have had. I remember my friend, who became my U.S. magistrate, Harold Taber. When he was a young man, he had a civil case before Judge Frank Norcross regarding a plaintiff who had had some heavy weight fall on her foot in a Sears, Roebuck store. After the conclusion of the trial, Judge Norcross decided the case in favor of the

plaintiff and, among other things, commented that she was entitled to substantial damages because of the injury to her foot, because he knew about those. He was shot in the foot once. That's the sort of thing that I think influences every judicial officer. You can't avoid it. In doing that, I don't think you are being unfair to anybody. There isn't any gross injustice being perpetrated.

Judge, what's the hardest part of your job?

You don't mean now?

At any time that you've been on the bench.

The worst part of being a judge is being in a situation where you are way behind in your work, and it doesn't look like you're going to be able to catch up. That would apply now as well as from the time I was appointed. Initially, the District of Nevada didn't have an overwhelming caseload. Then, the judges from Nevada served frequently in other districts. By 1978, when I retired, the caseload was way too heavy for one judge, and it had been accumulating for five or six years prior to that time. It is hard to know what to do.

Somehow I expected you to answer that question by saying that it was sentencing in criminal cases that caused you the most difficulty. You once told me something to that effect years ago.

That's true. I haven't done it for so long that I've sort of forgotten about it, but the first thing I did when I became a senior judge was tell the clerk I wouldn't take any more criminal cases. Those are really the easiest cases to try and to handle, or at least they used to be, but I just got tried of sentencing people and trying to figure out whether they were confirmed criminals, or there was some reasonable chance for rehabilitation.

Are you familiar with the sentencing guidelines that have now been promulgated?

I haven't paid a bit of attention to them.

One of the criticisms of them is that they substantially impair the discretion of the district judges in sentencing. Do you, as you look back on it, think it's important that judges have discretion in sentencing?

I do. I think that there has been a justified complaint about disparity in sentencing. It is something that you can't control if the judges do have discretion, because each judge will have a different perception of the condition or the opportunities of a particular defendant, but the great disparity in the enforcement of the criminal law is not in the judge's sentencing; it's in the choices made by the prosecutor. He has much more power and control about how the processes of criminal justice are going to be administered than a judge will ever have. We have always had a situation where the legislative branch of the state and federal governments has had the viewpoint, at least some of them, that there should be no substantial discretion with respect to sentencing.

I don't remember when the United States Probation Act was passed. I think it was the early 1930s, but I'm not sure. Before that was passed, we had a fairly structured sentencing system where anyone who was convicted in the federal court knew that he was going to get a certain minimum or maximum sentence for his conduct. The Probation Act is the principal discretionary tool that was granted to the federal judges, and it has been modified from time to time with new gimmicks such

as split sentences and things of that sort, but I think it's a serious mistake to revert to the old system of mandatory sentences.

What is the best part of your job?

To get to associate with such a fine class of people. I think the lawyers I have come to know, and the judges with whom I have made friends during the past twenty-five years; are the best part of the job. While you are mentally alert and eager, a variety of legal problems that you encounter in this particular position are a delight. After you've done it for twenty-five years, and you're getting kind of old, it doesn't seem as exciting as it was.

Can you think of any areas that came to your mind that I haven't asked, that you would like to comment on; any aspect of your life, your job?

I don't think that you've gone into very much about my associations in the Ninth Circuit, the Ninth Circuit District Judges Association, and things like that that occupied a lot of time, and were very pleasurable and would be an important part of the history. My recreational activities with my wife and family were somewhat buried.

You were instrumental in founding the District Judges Association, weren't you?

No. It was organized in late 1950s or middle 1950s by the district judges of the Ninth Circuit with the primary objective of obtaining representation of the District Judges of the United States on the Judicial Conference of the United States. I think that's it. As I recall, each of the judges contributed $50.00, and they got a campaign organized to persuade Congress to include representation of the district judges on the Judicial Conference. They were successful, although I haven't looked anything up to refresh my memory as to when that occurred.

When I was appointed in 1963, the first good news I had from Chief Judge Chambers was that the annual Ninth Circuit Judicial Conference was going to be held at Brockway in Lake Tahoe, and I was the arrangements chairman, taking over from my predecessor, Judge Ross. I found out then that part of the activities of the Ninth Circuit Conference was a program organized by the district judges on some legal subject of current importance. I think the first Ninth Circuit Judicial Conference I attended was in the early 1950s. As a lawyer, I had been appointed to the circuit committee on pre-trial proceedings. If you attended a conference now, the contrast between the situation, which presently exists, and the conference we had in 1953 or 1954, is striking. The Ninth Circuit Conference meeting was held in a district courtroom in the federal building on Mission and Seventh in San Francisco. Those in attendance were the circuit and district judges and a few lawyers, and we'd been named to various conference committees. It was really quite a small gathering. I think the next conference I attended was the year I was appointed. I had been nominated for a judgeship, but was not yet confirmed at the time of the conference. That conference was held in the hotel convention rooms in Santa Barbara, and was roughly twice the size in attendance of the earlier one I attended in San Francisco.

The District Judges Association for the Ninth Circuit was very active at the time I became a judge, and, as I say, I found out I was the arrangements chairman for the 1963-64 Ninth Circuit Conference. We had our District Judges Association meeting on the last day of the conference, and we were fortunate to have

Justice Byron White of the Supreme Court lead a discussion on the then new Supreme Court decisions affecting prisoners' *habeas corpus* and post conviction remedies, which were brand new and were causing a great deal of confusion among the judges as to what the procedures should be. The education seminar aspect of the district judges association was emphasized, and, as far as I know, the Ninth Circuit District Judges Association was the only organization, which supported and initiated continuing legal education for judges. Every year, the Ninth Circuit Judges Association had a committee organized, which had the obligation of producing a worthwhile program of continuing legal education. We always had a problem because there was no support financially from anyone, so in order to get together for a meeting, the judges had to defray their own subsistence and travel for themselves and their wives. Consequently, during the 1960s, our only meetings were annual meetings in connection with the judicial conference meetings, but we did have substantial and worthwhile continuing legal education programs.

We had our first mid-winter district judges association meeting in Arizona, where we had such a continuing legal education program, and we had substantial attendance from all over the Ninth Circuit; judges attending at their own expense without any subsidy. Then, when Walter E. Craig was president of the association, we had another one. In fact, that was in Carefree, Arizona, and we had excellent attendance there also. It was about that time, in the middle 1970s, that the Federal Judicial Center was organized; I don't recall the exact train of events. I think our first partially subsidized mid-winter continuing judicial education program was in connection with a sentencing conference, and we did have travel and subsistence for the judges. If you brought your wife, then that was at the judge's expense.

Ultimately, the Federal Judicial Center took over the idea of continuing education for all the judges of the United States, and they've been conducting seminars in every circuit, sometimes once a year and sometimes twice a year. As a consequence, the current Ninth Circuit District Judges Association is not attempting to promote the serious kind of continuing legal education that was the hallmark of the association for so many of its earlier years. One of its later programs was an effort to obtain membership on the circuit council. The circuit council consisted of only circuit judges, and they created rules, which affected the activities or procedures in the district courts without any consultation with the district judges. We thought that was a shoddy way to proceed. I can't remember whether this required legislation by Congress or not, but we now have current membership on the circuit council. I think the lawyers do too, don't they?

I don't think so.

Can't remember.

They do on the executive committee of the judicial conference, but not the council, I don't believe. Are the district judges who are on the circuit council voting members?

Yes. Anybody who wanted to talk about this with any authority would have to do some preparation. Along in the middle 1970s, other circuits became interested in our district judges association organization, and wrote about it and created their own organizations.

Do you think the existence of the Federal Judicial Center owes some substantial part of its being to the district judges association that was formed here in the Ninth Circuit?

Well, that's difficult to say. I think it was fairly well known that we were trying to do something in the field of continuing judicial education, and I think some of the leaders in Washington recognized that sort of activity was not only useful, but necessary with the proliferation of legislation that affects the federal judiciary that has been coming out of Congress the past twenty years or so. I don't remember who initially had the idea for a Federal Judicial Center, or what group it came out of, but it's been very useful, and the education programs they've produced are naturally much more thorough and instructive than the ones we were able to organize.

What does the Ninth Circuit District Judges Association do now, primarily?

Well, that's a problem I think we have. I'm not active in this any longer, except they continue to collect dues. They built up quite a war chest with nothing to spend it on as far as I can see. I believe I'll make a motion if I attend the next meeting that they eliminate dues for a while, but they do need a program. I think we accomplished every objective we had in mind from the time the association was organized, and have not been inspired to perceive some new programs that would be useful.

You served as president of the association.

Yes.

Was that just one year?

No, it was a two-year term.

What years was it?

I think it was 1975 and 1976.

Is membership in the District Judges Association voluntary?

Yes.

Are there any district judges to your knowledge who have not joined?

No. Maybe some senior judges who don't keep up their membership, but I think they all joined and found it very worthwhile. Every three years we nominate a district judge's representative to the Judicial Conference of the United States, and the circuit uniformly has adopted our nomination; there haven't been any problems about it. We also elect members now to the circuit council. I think they're elected.

In addition to the circuit council, which is a creature of statute, there is also another statutory body known as the Judicial Conference. Each circuit has one. It meets once a year, and statute says that all district and circuit judges are to attend. It also mandates membership by lawyers and others interested in the administration of justice in the circuit. The current rules, so far as I'm familiar with them, provide for lawyer representation in some fashion that probably has to do with the number of judges in a district, and makes the U.S. attorneys, the federal public defenders, and the bankruptcy judges' members, and perhaps U.S. magistrates now. All of that is fairly recent in terms of evolution. You mentioned the first circuit conference you went to was held in a courtroom in San Francisco.

I know other conferences where each judge having a lawyer representative was the rule for a while in the late 1960s and early 1970s, and then it has come to its current makeup. I believe Circuit Judge Clifford Wallace headed a committee of the circuit council.

I was on the committee.

I remember traveling to Phoenix to testify in connection with that, having been a lawyer representative from Nevada, thanks to you. I was wondering generally with the background of your time on the bench, and before, with the circuit conference, what your views are with respect to the effectiveness of it, the desirability of it, and the current makeup of the conference? I know there is a logistics problem, but I wonder if the old way was better.

Oh, I haven't tried to make any judgments about that. I think the committee that was appointed to reorganize the conference at that time had two things in mind. One was that it was getting too big, and the other was that from the point of view of the legal profession, the conference was not truly representative of the bar associations throughout the circuit because, as you've indicated, each judge had a right to appoint a delegate. It was routine for the judges to appoint pretty much the same people year after year; some close friend who liked to go to the conferences and enjoyed the conviviality, and there really wasn't too much being accomplished. Since the reorganization of the conference, it surely hasn't become any smaller, but that's primarily because of the increased numbers of magistrates, bankruptcy judges, federal judges, and circuit judges. There's no way to keep it smaller.

Go back ten years; I became a senior judge in 1978. During that ten-year period, I can't identify a single worthwhile important contribution that came out of that conference. Now, I could be 100% wrong, because I don't remember too well, but about ten years ago, Judge Spencer Williams organized the Federal Judges Association, and that's the association, not the judicial conferences, that has been primarily responsible for the improvement in judicial salaries and pension benefits for widows, and things of that sort. I really have grave doubts whether the conference contributes much of anything to the administration of justice other than an opportunity to get together and meet your fellow judges, practicing attorneys, and district attorneys, and that's important, I think. It's important to know who Judge Russell Smith up in Montana is. You shouldn't be in a little cocoon in a small city and stay there, but I can't view the conference as any tremendous success.

If instead of creating its own committees, the Judicial Conference of the United States would delegate certain fields of investigation and suggestions for improvement to different circuit conferences—they do worthwhile work, but all of the important changes that affect our lives as judges come out of Judicial Conference of the United States, and they have a tremendous list of committees. Of course, the judges in both the circuit and district, and the magistrates and so forth, the bankruptcy judges, serve on those committees, and also on committees of the Federal Judicial Center. Everything gets funneled back through Washington, but our Ninth Circuit Judicial Conference, as to its annual meeting, I don't think accomplished much.

The Ninth Circuit Conference has not met in Nevada frequently. You mentioned one at

Brockway. I think there was one other one here in Reno. Is there a reluctance on the part of the non-Nevada judges to come to the state, which has legalized gambling?

Well, that was the idea when the conference was established at Brockway, Lake Tahoe, for 1964. I believe it was thought to be bad for the image of the judiciary that they should be holding the conference in the state of Nevada, where there is legalized gambling. As a consequence, we had our main dinner party at Harrah's Casino, Stateline, and we had pretty good attendance at the meeting, but there was a substantial number who went a few hundred yards down to Cal Neva Lodge in Stateline and spent their time there. I didn't observe any personal reluctance by any of the judges to enter the state of Nevada to engage in the recreational facilities available here. The conference we had in 1974 at Harrah's Hotel in Reno was a tremendous success. Everybody liked it as far as I could find out.

What did your being a judge mean in terms of its effect on your ability to enjoy your family, to have recreational activities with your wife and children, and to generally be a husband and a father?

I don't think it had an adverse effect. At the time I was appointed, our oldest son was already going to Dartmouth College. Our daughter Judy entered Stanford about the time I was appointed, and we had one boy left in high school. My problem was trying to get my kids educated on the salary that they gave to us, but I made it all right. We were away from home after my appointment a great deal more than we had ever been before, although I customarily tried to plan summer or annual vacations for my family. At the time of appointment, Nevada was not a demanding state insofar as the need for judicial help was concerned, and I was appointed to help out San Francisco, Los Angeles, San Diego, Phoenix, Boise, Idaho; Spokane, Washington; Seattle and Portland, Oregon; Honolulu. I think Montana is the only state in the Ninth Circuit where I haven't served.

We found traveling to be fun because of the hospitality of the district judges, and the cities which we visited. They were all very friendly and hospitable. My wife and I had become interested in duplicate bridge, so for recreation, if there wasn't anything else that we wanted to do, we could always look up the duplicate bridge club in the town where we happened to be and get a game; we didn't have to know anybody. As I indicated, my children were just about ready to fly the coop anyway. I never talked to our younger son, Harold, about whether he felt deprived during the first years before he started to go to college in Santa Barbara. I really don't remember too clearly how he did about that. His grandmother lived right next door.

I gather that your being a judge didn't have an adverse effect on the family.

No.

In fact, it may have given you the opportunity to do some traveling you wouldn't have otherwise done.

That's right.

Let me ask you about the elimination of live court reporters. I know for many years all district judges had an assigned court recorder. That seems to be a system in its death throes

now, with electronic recording taking over. Is that something you have a view about as to whether it's good or bad?

I really haven't had enough experience for comparison. There are considerable advantages for a judge to have a court reporter that he gets along with well, and who is cooperative. For example, you get a section 2255 petition, and somebody says you didn't advise him correctly when you accepted his guilty plea. If you have your own court recorder, you can ask him to bring his notes and read the critical part to you, and find out whether you did or didn't. It simplifies things. I've had one experience with the deputy clerk, the one who handles the recording of court proceedings, and that was quite successful. Initially, she brought me a copy of her tape of a witness's testimony. That was very unsuccessful. I couldn't hear the witness's testimony, so she brought in her principal machine with her original tape. If you listen to the witness's testimony when he speaks, she can pinpoint the particular microphone he's speaking into, and it's just as clear as a bell; it's very good. There's no reason why you can't obtain an excellent transcript from that type of recording, as far as I can see. I've never had a transcript yet. Of course, all those things depend on the care and attention of the particular individual.

It makes me wonder whether the system will eventually move to videotapes.

Ah, yes.

If so, what effect will that have on the traditional roles of the district court, with judges and jurors being trier of fact because they get to see the witness, and the appellate court not determining credibility because they don't?

That's going to be a problem, I'm sure.

Is there anything else you think should be included in this interview?

I might say something about some specific ideas I have about running courtrooms that everybody doesn't agree with. I think that bench conferences are for the birds. I think there are problems with them. I know that cases have held that it's no denial of a defendant's constitutional rights in a criminal case to hold a bench conference over some important ruling on the admissibility of evidence under circumstances where he can't hear, let alone participate, but I think that those cases are very questionable. It is important that the defendant be present, and at least be able to see and hear what's going on at all important occasions during the trial. I don't think that occurs during bench conferences.

I decided early in my judicial career that we wouldn't have bench conferences if we could avoid them. I adopted the practice of asking the attorneys who made an objection and requested a hearing out of the presence of a jury to reserve that matter until we took a recess, because another thing I don't approve of is running the jury in and out of the courtroom every few minutes. I never had the least bit of a problem in any place where I tried cases, with respect to the procedure of asking an attorney to wait until the recess. Then we'd take up his matter and he could go on to something else at that point in the trial. When we had the recess, we'd excuse the jury and I'd take as long as the attorneys thought they needed to explain what their point was

with regard to the objection before the court, or the motion for a mistrial, or whatever it might be.

My way of looking at it is that's a much preferable way of handling the situation. Another thing that I think is important is regular courtroom hours. I think it's important to the lawyers, it's important to the witnesses, it's important to the jurors. It doesn't make much difference to the judge. You can start court at 8:00 in the morning on one day and 9:30 the next, and quit at 2:00 one day and 5:00 the next if that suits your fancy, but I think it really is important with respect to a reasonably happy jury, and reasonably well-prepared and contented attorneys, to let them know in advance how you plan to operate your court during the trial. I observed thousands of times, if you tell them you are going to have recess at shortly before 11:00 every public telephone within the building will be in use. Business people on the jury can check up on things. If they know that they're going to have from 12:00 to 1:30 for a lunch hour, it doesn't hurt a businessperson half as much. He can accomplish quite a bit during that period of time with respect to what he thinks are important problems in his business, and which worrying about would take his attention away from what's going on in the trial itself.

I know, as a practicing attorney, that lawyers have to have time. I know there's no way that you can remain fairly alert and keep in pretty good shape, and be ready day after day to try the case unless you have time before, and at noon, and afterward to work on it. And if you run your court in such a way that the lawyers, the jurors, and other people involved can't rely on a pretty well-defined schedule, I think you hurt the trial and you do a disservice to the people involved. I don't mean that you have to be arbitrary. There are situations that arise where we could well run to 6:00 or 7:00 at night, if everybody's happy with that situation, in order to get rid of an expert witness, or whatever you want to do it for, but generally speaking I think you ought to try to have regular hours. The counterpart of that is that you have to be there on time yourself, when you're supposed to be.

I don't think it ought to be difficult for attorneys to get in to see a judge. I've heard of judges where the lawyers think that they shouldn't try to see them, but I've never had an attorney abuse the privilege of seeing me. You can find out right away whether he's got a problem that he shouldn't discuss with you without other attorneys being present, or most of them know that anyway, and they arrange other counsel to be present when they want to have some kind of a conference. I think judges ought to be sensitive about having members of the public come in to see them. If they come in to talk about a particular case, in certain circumstances it would be very appropriate for them to do so, and other circumstances quite inappropriate. It's not hard to weed them out.

How long do you intend to continue to serve as an active senior judge?

If I continue to get deafer and deafer, I'm going to have to quit trying cases, but I can still work on motions and other paperwork. I think that in one way or another, I'll probably stay until the Grim Reaper comes along and reaps me.